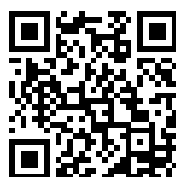


---

This is a reproduction of a library book that was digitized by Google as part of an ongoing effort to preserve the information in books and make it universally accessible.

Google™ books

<https://books.google.com>



**BUILDING USE ONLY**











HEARINGS  
before the  
UNITED STATES SENATE  
COMMITTEE ON COMMERCE

92nd Congress

Buck  
J60  
I 61  
92nd  
v. 5  
DOCS

United States  
Government Printing Office  
Washington



# AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

## HEARINGS BEFORE THE COMMITTEE ON COMMERCE UNITED STATES SENATE NINETY-SECOND CONGRESS

FIRST SESSION

ON

**S. 945**

UNIFORM MOTOR VEHICLE INSURANCE ACT

**S. 946**

MOTOR VEHICLE GROUP INSURANCE ACT

**S. 976**

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

**S. Con. Res. 23**

CONGRESSIONAL CALL FOR STATE ACTION

MARCH 10, 18, AND MAY 3, 1971

**PART 1**

**Serial No. 92-18**

Printed for the use of the Committee on Commerce

U.S.S.D.





# AUTOMOBILE INSURANCE, REFORM AND COST SAVINGS

---

## HEARINGS BEFORE THE COMMITTEE ON COMMERCE UNITED STATES SENATE NINETY-SECOND CONGRESS

FIRST SESSION

ON

**S. 945**

UNIFORM MOTOR VEHICLE INSURANCE ACT

**S. 946**

MOTOR VEHICLE GROUP INSURANCE ACT

**S. 976**

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

**S. Con. Res. 23**

CONGRESSIONAL CALL FOR STATE ACTION

---

MARCH 10, 18, AND MAY 3, 1971

---

PART 1

---

Serial No. 92-18

---

Printed for the use of the Committee on Commerce



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1971

64-346 O

11713

Digitized by Google

## COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island

VANCE HARTKE, Indiana

PHILIP A. HART, Michigan

HOWARD W. CANNON, Nevada

RUSSELL B. LONG, Louisiana

FRANK E. MOSS, Utah

ERNEST F. HOLLINGS, South Carolina

DANIEL K. INOUE, Hawaii

WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire

WINSTON PROUTY, Vermont

JAMES B. PEARSON, Kansas

ROBERT P. GRIFFIN, Michigan

HOWARD H. BAKER, Jr., Tennessee

MARLOW W. COOK, Kentucky

MARK O. HATFIELD, Oregon

TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*

MICHAEL PERTSCHUK, *Chief Counsel*

S. LYNN SUTCLIFFE, *Staff Counsel*

ARTHUR PANKOFF, Jr., *Minority Staff Director*

PETER POWELL, *Minority Professional Staff*

(II)

# CONTENTS

	Page
Opening statement by the chairman .....	1, 101
Text of bills:	
S. 945 .....	305
S. 946 .....	329
S. 976 .....	2, 333
S. Con. Res. 23 .....	352
Agency Comments on S. 945:	
Department of the Treasury .....	359
Department of Commerce .....	359
Agency Comments on S. 976:	
Comptroller General .....	21, 360
Department of Justice .....	21, 361
National Science Foundation .....	22
Department of the Treasury .....	361

## CHRONOLOGICAL LIST OF WITNESSES

### MARCH 10, 1971

Haddon, Dr. William Jr., president, Insurance Institute for Highway Safety .....	23
Letters of:	
April 30, 1971 .....	51
June 7, 1971 .....	98
Appendix A .....	54

### MARCH 18, 1971

Volpe, Hon. John A., Secretary, Department of Transportation; accompanied by Richard Walsh, Deputy Director for Policy and Plans Development; Charles D. Baker, Assistant Secretary for Policy and International Affairs; and Lee W. Huff, Director for Policy and Plans Development .....	102
Concurrent resolution .....	108
Question of Senator Hart and the answers thereto .....	127
Attachment A .....	135
Attachment B .....	138
Report of March 1971 .....	145

### MAY 3, 1971

Opening statement by the chairman .....	303
Opening statement of Senator Hart .....	362
Angevine, Mrs. Erma, executive director, Consumer Federation of America .....	388
Washington, D. C. ....	364
Córdova, Hon. Jorge L., U.S. Representative from Puerto Rico .....	364
Fournier, Frank W., executive director, Administration for the Compensation of Automobile Accidents, San Juan, P.R. ....	380
Klein, Robert J., economics editor, Consumers Union, Mount Vernon, N. Y. ....	364
Max, Frank J., Jr., vice president, Avis Rent-A-Car System, Inc., president of Catrala; accompanied by John Murphy, vice president of Avis Rent-A-Car System, Inc., on behalf of Winston V. Morrow, Jr., chairman of the board, president, and chief executive officer, Avis Rent-A-Car System, Inc.; Sol M. Edidin, vice president, secretary, and general counsel of Hertz Corp., on behalf of Robert A. Smalley, president and chief executive officer, Hertz, Corp.; and Gordon Bowker, vice president, Ryder Truck Rental, Inc. ....	404
Prepared statement of Mr. Smalley .....	413

# IV

## ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

	Page
A Trial Lawyer's Legislative Workbook.....	922
A Federal Insurance Approach, article from the Minneapolis Star.....	1801
Advance Payments in Liability Claims, article by Buchheit, Young, and Kurtrock.....	1207
Aiken, Hon. George D., U.S. Senator from Vermont, letter of May 8, 1971.....	1905
Allar, Alice M., letter with attachments of June 30, 1971.....	1979
American Association of Retired Persons, National Retired Teachers Association, statement.....	2084
Annual Style Change in the Automobile Industry as an Unfair Method of Competition, article from the Yale Law Journal.....	1318
Arbitration: The Philadelphia Story, article from the Journal of American Insurance.....	536
Bay State's Insurance Industry Hit (article from the Journal of Commerce, Apr. 26, 1971).....	921
Beirne, Joseph A., president, Communications Workers of America, statement.....	2083
Berry, Ross D., telegram of May 11, 1971.....	1955
"Energy-Absorbing Systems Vie for Role Behind Auto Bumpers", article by Nicholas P. Chironis.....	1929
Could Losing Legal Fees Explain Bar's Stand on Auto Insurance?, article from the Louisville Courier Journal.....	620
Ex-Supreme Court Justice Clark Hits No-Fault Insurance Proposal, article from Trial magazine.....	603
Fegraus, Clark E., president, and M. Van Loan, vice president, Automotive Environmental Systems, Inc., San Bernardino, Calif., statement.....	2064
Flanigan, James, counsel, statement of the Independent Garage Owners of America, Inc.....	1820
Friedman, Gilbert, letter of March 25, 1971.....	1708
Furness, Betty, State Consumer Protection Board of the State of New York:	
Telegram.....	404
Letters of April 27, 1971.....	1951
Gee, Thomas G., Graves, Dougherty, Gee, Hearon, Moody & Garwood, letter of February 16, 1967.....	925
Goodsell, Dr. John O., letter of March 31, 1971.....	1710
Griffith, R. W., vice president and actuary, Nationwide Mutual Insurance Co., letter.....	1442
Guiding Principles Relating to Automobile Insurance Claims, article.....	1209
Harriss, Lynn M. F., FASLA, letter of March 12, 1971.....	1949
Hart, Hon. Philip A., U.S. Senator from Michigan, letter of March 26, 1971.....	126
Hartke, Hon. Vance, U.S. Senator from Indiana, letter of June 26, 1969.....	1258
Heyworth, James O., president, Rehabilitation Institute of Chicago, letter of May 24, 1971.....	1956
Houston, Jack W., executive secretary, Georgia Association of Petroleum Retailers, Inc., letter of June 23, 1971.....	1977
Ingram, Denny O., Jr., letter.....	925
Insurance: The Road To Reform, article from the Consumer Reports.....	400
"Insurers and State Regulations Put Detroit on the Carpet", article by John Kolb and Michael Sheldrick.....	1928
International Longshoremen's & Warehousemen's Union, statement.....	2071
Jackson, William C., letter of May 11, 1971.....	1954
Jensen, Everett J., general secretary, Washington State Council of Churches, letter of April 22, 1971.....	1950
Jones, Frank K., president, Citizens Committee for Ethical Insurance, letters of:	
May 28, 1971.....	2027
May 5, 1971.....	2030
March 1, 1970.....	2036
August 30, 1970.....	2037
Keep the Compulsory (article from the Boston Globe, Tuesday, Dec. 6, 1966).....	920
Laurence, A. E., letter of May 10, 1971.....	1921
Leach, Austin F., vice president, Corporate Projects, Omark Industries, letter with attachments of June 8, 1971.....	1982

Leighton, Howard H., president, National Association of Insurance Agents, Inc., letter of March 19, 1971.....	Page 1949
Lorenzi, John de, managing director, Public and Government Relations, American Automobile Association, letter of June 4, 1971.....	1965
Mackoff, Benjamin S., administrative director, Circuit Court of Cook County, Ill., statement.....	2069
Magnuson Hon. Warren G., U.S. Senator from Washington, and chairman of the Senate Committee on Commerce, letters of: March 24, 1971.....	50
May 27, 1971.....	98
Maisonpierre, Andre, vice president, American Mutual Insurance Alliance letter of July 22, 1971.....	1902
Marshall, James, counsel, statement.....	2077
McDonald, Ernest, letter of May 5, 1971.....	1952
Michael, Bayard H., letter of April 6, 1971.....	1707
Mingle, Frank A., Motors Insurance Corp., letter.....	1282
Morrisey, William W., vice president, Marketing, Lau Inc., letter of June 14, 1971.....	1974
National Association of Mutual Insurance Companies, statement.....	2081
National Conference of Commissioners on Uniform State Laws, letter of April 13, 1971.....	1804
National Highway Safety Bureau, Federal Highway Administration, U.S. Department of Transportation, Comparative Crash Survivability of Motor Vehicles.....	1258
"National No-Fault" (article from the Boston Globe, Friday, April 30, 1971).....	921
Nielsen, Robert R., letter of May 13, 1971.....	1955
"No-Fault Car Insurance Has Faults," article by Jack Mabley, from Chicago Today, April 15, 1971.....	2074
O'Connell, Prof., Jeff criticizing Ogilvie No-Fault insurance bill, statement.....	2075
Ogilvie, Hon. Richard B., Governor, State of Illinois, letter of May 12, 1971.....	1761
Rafferty, William A., executive vice president, Motor and Equipment Manufacturers Association, letter of May 28, 1971.....	1959
Rogers, Norman L., president, Lawyer Reform of the United States, statement.....	2081
Rue, Charles L., chairman, National Affairs Committee, Independent Mutual Insurance Agents Association of New York, New Jersey, and Connecticut, statement.....	2066
Salter, Leon J, letter.....	1920
Scariano, Anthony, statement on H.R. 7515.....	2072
Schmitt, Allen, president, Kentucky State Bar Association, resolution....	619
Schneider, Lawrence R., acting chief counsel, National Highway Traffic Safety Administration, Department of Transportation, letter of July 1, 1971.....	1881
Smith, Sherman T., Southern Service Co., letter of April 26, 1971.....	1950
Spaeth, Karl H., letter of May 11, 1971.....	1953
Sternberg, E. R., director, Engineering Planning Truck Group, White Motor Corp., letter of June 11, 1971.....	1967
"The 'No Fault' Insurance Plan" article from the San Francisco Chronicle, dated March 24, 1971.....	1709
Thompson, H. C., president, and John Huemrich, executive director, National Congress of Petroleum Retailers, statement.....	2064
Tiebel, Harriet, executive director, American Occupational Therapy Association, Inc., letter of May 28, 1971.....	1957
Toms, Douglas W., Acting Administrator, National Highway Traffic Safety Administration, letter of January 15, 1971.....	1946

# VI

Turner, Frank C., U.S. Department of Transportation, letter of November 18, 1969.....	Page 1255
Vindral, George, article from Voice of the People, Chicago Tribune.....	1921
Voelker, William J., president, Illinois Defense Counsel, letter of May 14, 1971.....	1779
Volpe, John A., Secretary of Transportation, letter of June 8, 1971.....	1885
Walsh, C. A., Jr., vice president, Marketing, Atlantic Richfield Co., letter of June 18, 1971.....	1975
Walsh, Richard F., Deputy Director of Policy and Plans Development, letter of June 7, 1971.....	655
Wandschneider, Werner, Stonecrest Furniture House, letter of June 8, 1971.	1920
Watson, Gilbert L., Consumer Affairs Officer, letters of:	
March 10, 1971.....	1943
April 23, 1971.....	1922
Wetzel, Robert, president, Riverside Auto Lab Inc., letter of May 28, 1971.	1963
Wire Taps (article from the Boston Sunday Globe, April 25, 1971).....	922
Zal, Frank, arbitration commissioner, report.....	504

# AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

WEDNESDAY, MARCH 10, 1971

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 10:20 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart, Moss, Long, Baker, and Stevens.

## OPENING STATEMENT BY THE CHAIRMAN

Senator HART. The committee will be in order.

Today we are in this Committee on Commerce opening hearings on proposals designed to make automobiles less susceptible to damage. A fair enough question is: Why are you in Congress worrying about how susceptible cars are to damage? We are worrying about it because the citizen and his insurance company are worrying about it.

The citizen is worried because his car is costing him substantial money. No matter how careful a driver he may be, it is difficult to avoid a fender-bender now and then.

Suppose that the citizen is involved in one of these so-called fender-benders at a speed as low as 5 miles per hour, which is the equivalent of walking. By the time he gets his car out of the shop—and that might take several weeks—repairs often might run as high as \$500. This means that he has dipped into his pocket and come up with \$100 cash—if he has a \$100 deductible collision policy. His insurance company pays the remaining \$400 and gets it back from the citizen by charging him, and others like him, more for insurance. Of course, the citizen might not file a claim for the \$400 with his insurance company for fear they will cancel his policy and leave him without insurance for the “big accident.”

Think how nice it would be if the citizen's 5 miles per hour scrape did not cause any damage to his car. It has been estimated that more than a billion dollars a year could be saved if cars were able to withstand low-impact crashes without sustaining damage. That potential savings is more than enough reason, as I see it, for drivers and their elected representatives in Congress to care whether bumpers on cars can really “bump” or whether they are costly and potentially lethal cosmetic fixtures.

If there is no objection, at this point in the record, let there be printed a copy of a bill which I recently introduced which would permit the Secretary of Transportation to set property loss reduction standards for passenger automobiles, thereby paving the way for the kinds of savings discussed above. The bill also has other important features designed to save consumers money. These features will be discussed in subsequent hearings.

(The bill and agency comments follow:)

Staff member assigned to these hearings: S. Lynn Sutcliffe.

92<sup>d</sup> CONGRESS  
1<sup>st</sup> Session

# S. 976

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 25 (legislative day, FEBRUARY 17), 1971

Mr. HART (for himself, Mr. HARTKE, Mr. MAGNUSON, Mr. MUSKIE, Mr. PROX-  
MIRE, and Mr. RIBICOFF) introduced the following bill; which was read  
twice and referred to the Committee on Commerce

---

## A BILL

To amend the National Traffic and Motor Vehicle Safety Act of 1966 in order to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Motor Vehicle Informa-
- 4 tion and Cost Savings Act".

5

### PURPOSE

- 6 SEC. 2. (a) It is the purpose of this Act, (1) to amend
- 7 the National Traffic and Motor Vehicle Safety Act of 1966
- 8 (hereinafter referred to as "the Act") in order to establish

1 procedures for setting minimum property loss reduction stand-  
2 ards and to promote competition among motor vehicle manu-  
3 facturers in the design, production, and sale of motor vehicles  
4 which are less susceptible to damage in traffic accidents  
5 occurring at normal operating speeds and which lessen the  
6 risk of injury and death to occupants of motor vehicles and  
7 pedestrians involved in traffic accidents, and (2) to provide  
8 for the augmentation and implementation of certain Federal  
9 motor vehicle and highway safety standards.

10 (b) The first section of the Act (15 U.S.C. 1381) is  
11 amended to read as follows: "That the Congress finds and  
12 declares that—

13 " (1) it is necessary to establish motor vehicle safety  
14 standards for motor vehicles and equipment moving in  
15 interstate commerce, to establish testing procedures for  
16 passenger motor vehicles, to establish property loss re-  
17 duction standards, to undertake and support necessary  
18 safety research and development, and to expand the na-  
19 tional driver register; and

20 " (2) it is the purpose of this Act to reduce the  
21 number and severity of traffic accidents, the number of  
22 deaths and injuries resulting from such accidents, and  
23 the extent of property damage and economic losses re-  
24 sulting from such accidents."

**1**

2

4

7

9

12

17

20

21

1 vehicle manufactured primarily for the transportation of its  
2 operator and passengers upon the public streets, roads, and  
3 highways.”

4 **PROPERTY LOSS REDUCTION STANDARDS**

5 **SEC. 4.** Title I of the Act (15 U.S.C. 1391 et seq.) is  
6 amended by adding at the end thereof the following new  
7 sections:

8 (a) the words “or property loss reduction” after  
9 the words “motor vehicle safety” wherever they occur  
10 following section 102;

11 (b) the words “or property loss reduction stand-  
12 ards” after the words “motor vehicle safety standards”  
13 or “safety standard” wherever they occur following  
14 section 102 (except section 103 (h) ) ; and

15 (c) the words “or property loss reduction stand-  
16 ards” after the words “motor vehicle safety standard”  
17 wherever they occur following section 102 (except  
18 section 103 (g) ).

19 **PUBLIC DISCLOSURE OF COMPARATIVE SAFETY AND SUS-**  
20 **CEPTIBILITY TO DAMAGE OF PARTICULAR MOTOR**  
21 **VEHICLES AND ADDITIONAL STANDARDS**

22 **SEC. 5.** Title I of the Act (15 U.S.C. 1391 et seq.) is  
23 amended by adding at the end thereof the following new  
24 sections:

25 “SEC. 125. (a) The Secretary shall develop and pre-

1 scribe by regulations issued not later than July 1, 1972, a  
2 system of tests and testing procedures designed to allow a  
3 determination and comparison of the susceptibility to dam-  
4 age of passenger motor vehicles involved in traffic accidents  
5 which reasonably may be anticipated to occur at normal  
6 speeds and under normal operating conditions, including,  
7 but not limited to, collisions at speeds of five, ten, and  
8 fifteen miles per hour.

9       “(b) The Secretary shall, as soon as possible, after  
10 July 1, 1972, promulgate property loss reduction standards  
11 which will minimize economic losses associated with motor  
12 vehicle accidents. These standards shall be compatible with  
13 safety standards issued to protect motor vehicle occupants.

14       “(c) The Secretary shall, as soon as practicable, after  
15 July 1, 1972, promulgate a property loss reduction standard  
16 which requires that all motor vehicles manufactured after  
17 January 1, 1975, and offered for sale in the United States,  
18 are so designed and constructed with energy absorbing  
19 bumpers capable of withstanding impacts front and rear of  
20 5 miles per hour into a solid, fixed barrier (as prescribed  
21 by the Society of Automotive Engineers Standard J850)  
22 and the vehicle shall withstand such impacts with a mini-  
23 mum prescribed amount of damage as may be determined  
24 by the Secretary.

25       “(d) (1) The Secretary shall undertake a study of the

1 feasibility of developing tests and testing procedures designed  
2 to allow a determination and comparison of the risk of per-  
3 sonal injury or death to occupants of passenger motor ve-  
4 hicles resulting from traffic accidents which reasonably may  
5 be anticipated to occur at normal speeds and under normal  
6 operating conditions. The Secretary shall report the results  
7 of such study, and his findings and recommendations, in-  
8 cluding any recommendations for additional legislation he  
9 deems necessary, to the President and the Congress by  
10 July 1, 1972.

11 “(2) If the Secretary finds that such tests are feasible  
12 he shall develop and prescribe by regulations issued as soon  
13 as may be practicable such a system of tests and testing  
14 procedures.

15 “SEC. 126. (a) Each manufacturer of motor vehicles  
16 shall test production models of every make and model of  
17 passenger motor vehicle manufactured or imported by him in  
18 accordance with the regulations promulgated by the Secre-  
19 tary under the provisions of section 125 of this title, and  
20 shall furnish the results of such testing, including such data  
21 as the Secretary deems necessary, to the Secretary.

22 “(b) No manufacturer shall sell, offer for sale, intro-  
23 duce or deliver for introduction in interstate commerce, or  
24 import into the United States—

25 “(1) any passenger motor vehicle manufactured on

1 or after January 1, 1973, unless production models of  
2 the make and model of such motor vehicle have been  
3 tested in accordance with the regulations promulgated  
4 by the Secretary under section 125 (a) of this Act; or  
5 “(2) any passenger motor vehicle manufactured on  
6 or after a date one hundred and twenty days after the  
7 date on which regulations governing tests and testing  
8 procedures are promulgated by the Secretary under the  
9 provisions of section 125 (b) of this Act unless a pro-  
10 duction model of the make and model of such motor  
11 vehicle has been tested in accordance with such reg-  
12 ulations.

13 “SEC. 127. (a) The Secretary shall compile informa-  
14 tion submitted to him under testing programs carried out  
15 under the provisions of sections 125 and 126 of this Act,  
16 and furnish it to the public in a simple and readily under-  
17 standable form in order to facilitate comparison among the  
18 various makes and models of passenger motor vehicles with  
19 respect to the factors analyzed by such testing programs.  
20 The information shall include, but not be limited to a com-  
21 parative analysis of the cost of repairing motor vehicles  
22 under section 125 (a) and if practicable under section  
23 125 (d) . The Secretary shall require that the results of such  
24 testing be made available to prospective purchasers of pas-

1 senger motor vehicles by the manufacturer of such motor  
2 vehicles prior to their sale.

3 “(b) The Secretary shall—

4 “(1) make such information available to insurance  
5 companies and business organizations engaged in the  
6 business of selling or underwriting motor vehicle insur-  
7 ance in interstate commerce, for use in determining  
8 premium rates for insurance covering property damages  
9 and personal injury related to the factors tested under  
10 the provisions of section 126 of this Act. Information  
11 furnished shall include, but not be limited to, identifica-  
12 tion of parts, components, systems, and subsystems  
13 damaged or displaced in the motor vehicles tested; and

14 “(2) report to the President and the Congress on  
15 February 1, 1973, on the extent to which the motor  
16 vehicle insurance industry is utilizing such information  
17 in the determination of insurance premium rates, to-  
18 gether with such additional findings and recommenda-  
19 tions, including recommendations for additional legis-  
20 lation, as he deems appropriate. The Secretary is au-  
21 thorized to conduct such studies and surveys as may be  
22 necessary to carry out the purposes of this Act.

23 “(3) The Secretary, not later than February 1,  
24 1974, shall establish procedures requiring the automo-  
25 bile dealers to provide insurance cost data to prospective

9)

1 purchasers that would enable the prospective purchasers  
2 to compare the difference in costs for auto insurance on  
3 the various makes and models of passenger motor vehi-  
4 cles having different occupant injury severity or vehicle  
5 property damage characteristics.

6 "SEC. 128. The Secretary shall, as soon as practicable,  
7 promulgate Federal motor vehicle safety and property loss  
8 reduction standards which require that all motor vehicles  
9 manufactured after January 1, 1975, and offered for sale in  
10 the United States, are so designed and constructed as to  
11 facilitate motor vehicle inspection, and to facilitate the re-  
12 pairs necessary to meet the requirements of such inspection."

13 JUDICIAL REVIEW

14 SEC. 6. Section 105 (a) (1) of the Act (15 U.S.C.  
15 1394 (a) (1) ) is amended by inserting after the words "any  
16 order under section 103" the following: "or 128, or any  
17 regulation issued under section 125."

18 SAFETY RESEARCH

19 SEC. 7. Section 106 (a) of the Act (15 U.S.C.  
20 1395 (a) ) is amended by redesignating paragraphs (2)  
21 and (3) as paragraphs (3) and (4), respectively, and  
22 inserting immediately after paragraph (1), the following  
23 new paragraph:

24 "(2) collecting data from any source for the pur-

1 pose of determining the relationship between passenger  
 2 motor vehicle performance and design characteristics and  
 3 (A) property damage resulting from motor vehicle col-  
 4 lisions, and (B) the occurrence of personal injury or  
 5 death resulting from such accidents;”

6 COOPERATION WITH OTHER AGENCIES

7 SEC. 8. Section 107 of the Act (15 U.S.C. 1396) is  
 8 amended by striking out the period at the end thereof, and  
 9 inserting in lieu thereof a semicolon and the following:

10 “(3) tests and testing procedures established under  
 11 section 125 and methods for inspecting and testing to  
 12 determine compliance with such tests and testing  
 13 procedures.”.

14 PROHIBITION AND EXCEPTIONS

15 SEC. 9. Section 108 (b) of the Act (15 U.S.C. 1397  
 16 (b) ) is amended by—

17 (1) inserting in paragraphs (1), (3), and (5) of  
 18 such section, immediately after the words “subsection  
 19 (a)” wherever they appear in such paragraphs, a  
 20 comma and the words “and section 126 (b),”; and

21 (2) amending paragraphs (2) and (3) of such  
 22 section 108 to read as follows:

23 “(2) Paragraph (1) of subsection (a), and section  
 24 126 (b) shall not apply to any person who establishes that  
 25 he did not have reason to know in the exercise of due care

1 that such vehicle or item of motor vehicle equipment is not  
2 in conformity with applicable Federal motor vehicle safety  
3 standards or property loss reduction standard or, in the case  
4 of a passenger motor vehicle, is not of a make and model  
5 which has been tested in accordance with the requirements  
6 of section 126 (b) , or to any person who, prior to such first  
7 purchase, holds a certificate issued by the manufacturer or  
8 importer of such motor vehicle or motor vehicle equipment,  
9 to the effect that such vehicle or equipment conforms to all  
10 applicable Federal motor vehicle safety standards, and (in  
11 the case of a passenger motor vehicle) is of a make and  
12 model which has been tested in accordance with the require-  
13 ments of section 126 (b) , unless such person knows that  
14 such motor vehicle or motor vehicle equipment does not so  
15 conform or (in the case of a passenger motor vehicle) is not  
16 of a make or model which has been so tested.

17 “(3) A motor vehicle or item of motor vehicle equip-  
18 ment offered for importation in violation of paragraph (1)  
19 of subsection (a) , or section 126 (b) , shall be refused ad-  
20 mission into the United States under joint regulations issued  
21 by the Secretary of the Treasury and the Secretary; except  
22 that the Secretary of the Treasury and the Secretary may,  
23 by such regulations, authorize the importation of such ve-  
24 hicle or item of motor vehicle equipment into the United  
25 States upon such terms and conditions (including the fur-

1 nishing of a bond) as may appear to them appropriate to  
 2 insure that any such motor vehicle or item of motor vehicle  
 3 equipment will be brought into conformity with any ap-  
 4 plicable Federal motor vehicle safety or property loss re-  
 5 duction standard prescribed under this title, brought into  
 6 conformity with the requirements of section 126 (b) , or will  
 7 be exported or abandoned to the United States.”.

#### 8 PENALTIES

9 SEC. 10. Section 109 (a) of the Act (15 U.S.C.  
 10 1398 (a) ) is amended to read as follows:

11 “SEC. 109. (a) Whoever—

12 “(1) violates any provision of—

13 “(A) section 108 (relating to motor vehicle  
 14 safety standards or property loss reduction  
 15 standards) ;

16 “(B) subsection (c) or (d) of section 112  
 17 (relating to keeping records and reporting data) ;

18 “(C) section 114 (relating to certification) ; or

19 “(D) section 126 (relating to passenger motor  
 20 vehicle testing) ; or

21 “(2) refuses to permit an inspection authorized  
 22 under section 112 (a) and (b) shall be subject to a  
 23 civil penalty of not to exceed \$5,000 for each such  
 24 violation or refusal. A violation of a provision of such

1 sections or regulations issued thereunder, shall consti-  
 2 tute a separate violation with respect to each motor  
 3 vehicle sold, offered for sale, introduced or delivered for  
 4 introduction in interstate commerce, or imported into  
 5 the United States in violation of such provisions or  
 6 regulations, and with respect to each failure or refusal  
 7 to allow or perform an act required thereby. A refusal  
 8 to allow an inspection authorized under section 112 (a)  
 9 and (b), or a refusal or failure to allow or perform an  
 10 act required thereby, shall constitute a separate viola-  
 11 tion with respect to each day such refusal or failure  
 12 continues.”

#### 13 INJUNCTIVE RELIEF

14 SEC. 11. Section 110(a) of the Act (15 U.S.C.  
 15 1399(a)) is amended by inserting in the first sentence  
 16 thereof, immediately after the words “standards prescribed  
 17 pursuant to this title”, a comma and the following: “or to  
 18 the requirements of section 126(b)”.

#### 19 REPURCHASE OR REPLACEMENT

20 SEC. 12. Section 111(a) of the Act (15 U.S.C.  
 21 1400(a)) is amended by inserting immediately after the  
 22 words “applicable Federal motor vehicle safety standards”  
 23 or property loss reduction standards the following: “or the  
 24 requirements of section 126(b)”.

## 1           INSPECTION OF MANUFACTURING FACILITIES

2           SEC. 13. Section 112(b) of the Act (15 U.S.C.  
3 1401(b)) is amended by inserting, immediately after the  
4 words "or are held for sale after such introduction", a  
5 comma and the following: "or are held after being tested  
6 in accordance with the requirements of section 126(b)".

## 7           CERTIFICATION OF CONFORMITY

8           SEC. 14. Section 114 of the Act (15 U.S.C. 1403) is  
9 amended by inserting before the period at the end of the  
10 first sentence a comma and the following: "and that the  
11 particular make and model of such motor vehicle has  
12 been tested in accordance with the requirements of section  
13 126(a)".

## 14           TITLE V

15   DIAGNOSTIC INSPECTIONS, REGISTRATIONS AND TITLING  
16           STANDARDS

17           SEC. 501. (a) The Secretary of Transportation shall,  
18 not later than January 1, 1973, amend highway safety pro-  
19 gram standard number 1, relating to periodic motor vehicle  
20 inspection, issued June 27, 1967, under the provisions of  
21 section 402(a) of title 23, United States Code, to include  
22 the following additional provisions:

23           (1) The standard shall require inspection of a motor  
24 vehicle whenever the title to the motor vehicle is transferred  
25 for purposes other than resale, and whenever the motor

1 vehicles, automotive repair parts or accessories: *Provided*,  
2 subsystem, or functional nonoperational part, as defined by  
3 the Secretary, is damaged.

4 (2) The standard shall require that a certificate of  
5 safe operating condition shall be delivered by the seller of a  
6 motor vehicle to the purchaser at the time of sale. The cer-  
7 tificate shall be prepared and signed by an inspector trained  
8 to perform this duty. The inspector shall be certified by the  
9 State in accordance with provisions established by the Sec-  
10 retary. No motor vehicle inspector may be certified by any  
11 State if he owns or receives any benefit in or from a busi-  
12 ness or enterprise engaged in the repair or sale of motor  
13 vehicles, automotive repair parts or accessories: *Provided*,  
14 That upon approval of the Secretary, a State may certify a  
15 motor vehicle inspector receiving such benefit where the  
16 vehicle population to be served is insufficient to make inde-  
17 pendent motor vehicle inspectors feasible and such State  
18 makes provision for protecting the public from any conflict  
19 of interest resulting from such certification.

20 (3) The standard shall be expressed in terms of motor  
21 vehicle safety performance applicable to new or used motor  
22 vehicles.

23 (b) The Secretary shall, not later than January 1,  
24 1973, amend highway safety program standard numbered 2,  
25 relating to motor vehicle registration, issued on June 27,

1 1967, under the provisions of section 402 (a) of title 23,  
 2 United States Code, to include requirements for a State motor  
 3 vehicle registration and uniform certificate of title program  
 4 similar to the registration and title program contemplated by  
 5 the Uniform Motor Vehicle Code and Model Traffic Ordinance,  
 6 chapter 3, "Certificates of Title and Registration of  
 7 Vehicles" revised 1968 and published by the National Committee  
 8 on Uniform Traffic Laws and Ordinances, Washington,  
 9 District of Columbia.

10 **REPORTS ON IMPLEMENTATION**

11 **SEC. 502. (a)** The Secretary shall report to the President  
 12 and Congress by January 1, 1972, the extent to which  
 13 the States have implemented programs in accordance with the  
 14 provisions of highway safety program standards numbered 1  
 15 and 2, relating to periodic motor vehicle inspection and motor  
 16 vehicle registration, respectively, as issued on June 27, 1967,  
 17 and make legislative recommendations for Federal financial  
 18 and other assistance, as he deems necessary in order to facilitate  
 19 compliance by the States by January 1, 1973.

20 **(b)** The Secretary shall provide for the States financial  
 21 incentive programs for establishing the inspection and titling  
 22 standards of this title. Each State certified by the Secretary  
 23 as being in compliance with the provisions of this title shall,  
 24 after January 1, 1973, receive not less than 10 per centum  
 25 nor more than 50 per centum of the annual costs of such pro-

1 grams, the percentage to be determined by the Secretary  
2 based on degree of compliance. The funds for these incentive  
3 programs shall be paid from the Federal Aid Highway Trust  
4 Funds apportioned on or after January 1, 1973.

5 (c) The Secretary shall report to the President and  
6 Congress by January 1, 1974, the extent to which the  
7 States have implemented programs in accordance with the  
8 provisions of section 501 of this Act, and make legislative  
9 recommendations, for Federal financial and other assistance,  
10 as he deems necessary to facilitate complete compliance by  
11 the States not later than January 1, 1975.

12 (d) Not later than July 1, 1973 the Secretary shall—

13 (1) certify each State program of motor vehicle  
14 inspection and motor vehicle registration which meets  
15 the requirements of the applicable standard;

16 (2) the Secretary shall not approve any State high-  
17 way safety program under this section which does not  
18 establish motor vehicle inspection or motor vehicle  
19 registration programs meeting the requirements of  
20 section 501 of this title and the appropriate Federal  
21 highway safety program standard; and

22 (3) funds authorized to be appropriated to carry  
23 out the provisions of section 501 and this section shall  
24 be used to aid the States to conduct the highway safety  
25 program approved in accordance with subsection (a),

1 (b), and (c) hereof. Federal aid highway funds ap-  
2 portioned on or after January 1, 1975, to any State  
3 which is not implementing a highway safety program  
4 approved by the Secretary in accordance with this sec-  
5 tion shall be reduced for the first year of noncompliance  
6 by amounts equal to 10 per centum of the amounts  
7 which would otherwise be apportioned to such State  
8 under section 104 of title 23, United States Code, with  
9 the reduction of an additional 10 per centum for each  
10 succeeding year of noncompliance, but not in excess  
11 of a total of 50 per centum, until such time as the  
12 State is implementing an approved highway safety  
13 program certified by the Secretary in accordance with  
14 this subparagraph (d). Any amount which is with-  
15 held from apportionment to any State hereunder shall  
16 be reapportioned to the other States.

17 (e) In order to carry out the provisions of this sec-  
18 tion, the Secretary may—

19 (A) assist, by contract, grant, or any other arrange-  
20 ment, any State in establishing or improving programs  
21 of periodic motor vehicle inspection and motor vehicle  
22 registration;

23 (B) use the personnel, facilities, and information  
24 of Federal agencies, and of State and local public

1 agencies, with the consent of such agencies, with or  
2 without reimbursement for such use;

3 (C) enter into contracts or other arrangements and  
4 modifications thereof, and make advance, progress, and  
5 other necessary payments;

6 (D) obtain the services of experts and consultants  
7 in accordance with the provisions of section 3109 of  
8 title 5, United States Code; ~~and~~

9 (E) issue, amend, and repeal such rules and regu-  
10 lations as may be necessary; and

11 (F) take such other appropriate action as may be  
12 necessary.

13 SEC. 503. There are authorized to be appropriated to  
14 the Department of Transportation such sums as may be  
15 necessary to carry out the provisions of this Act.

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., March 29, 1971.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
 U.S. Senate.*

DEAR MR. CHAIRMAN: By letter of March 8, 1971, you requested our comments on S. 976, 92d Congress, entitled: "A BILL To amend the National Traffic and Motor Vehicle Safety Act of 1966 in order to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes."

While we have no special information as to the advantages or disadvantages of this measure and, therefore, make no comments concerning its enactment, we recommend the addition of provisions for records retention and access to records for the purpose of audit. Paragraphs (A) and (C) of subsection 502(e) authorize the Secretary of Transportation to enter into grants, contracts or any other arrangement, including such assistance to States, in order to carry out the provisions of section 502. Since there are no record provisions in section 502, we suggest the addition of subsections (f) and (g) as follows:

"(f) Each recipient of assistance under this section pursuant to grants, contracts or any other arrangement entered into under other than competitive bidding procedures shall keep such records as the Secretary of Transportation shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(g) The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants, contracts or any other arrangement entered under this section under other than competitive bidding procedures."

Under section 202 of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577, 82 Stat. 1101, the Comptroller General and heads of Federal agencies have access to records pertaining to grants-in-aid received by States. However, section 202 does not cover contracts or any other arrangement for financial assistance except grants to States.

The language in lines 1 through 3 of page 15 (section 501(a)(1)) is garbled and should be clarified. Section 14(a)(1) of S. 4331, 91st Congress, 2d session, which is otherwise identical to section 501(a)(1) of S. 976 reads as follows in place of the garbled language:

"vehicle sustains damage if any safety-related mechanism, subsystem, or functional nonoperational part, as defined by the Secretary, is damaged."

Sincerely yours,

R. F. KELLER,  
*Assistant Comptroller General of the United States.*

---

OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., May 28, 1971.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
 U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 976, a bill "To amend the National Traffic and Motor Vehicle Safety Act of 1966 in order to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes."

The preliminary sections of the bill would broaden the declaration of purposes contained in the Act of 1966 and add new definitions. Substantive provisions direct the Secretary of Transportation to develop and prescribe regulations by July 1, 1972, establishing a system of tests and test procedures for determining susceptibility to damage of passenger cars in low speed collisions. Cars manufactured subsequent to January 1, 1973 would be required to be subjected to the

tests by the manufacturers and no car which had not been so tested could be sold or delivered in interstate commerce. It would be required that the results of such testing be made available to prospective purchasers by the manufacturer.

The Secretary of Transportation would also be required to promulgate property loss reduction standards designed to minimize economic losses associated with automobile accidents and to promulgate a standard requiring energy absorbing bumpers in all cars manufactured after January 1, 1974.

The bill directs the Secretary of Transportation to conduct a feasibility study regarding the development of tests to determine anticipated injuries to occupants of motor vehicles in collisions and to report his findings and recommendations to the President and Congress by July 1, 1972. If tests are found feasible, the Secretary would be required to implement the testing by prescribing regulations.

The Secretary of Transportation would be required to make available to the public and disseminate to insurance companies information submitted to him from the testing programs and report to the President and Congress the extent to which such information is utilized in determining insurance rates. By February 1, 1975, car dealers would be required to provide comparative cost data on auto insurance to prospective purchasers of vehicles with different occupant injury severity or property damage characteristics.

In addition the bill would strengthen and implement vehicle inspection standards and establish a nationwide uniform titling system.

Under the terms of the bill, the Secretary of Transportation would report to the President and Congress by January 1, 1974, on the extent to which the States have implemented programs in accordance with those provisions of the bill concerned with inspection and registration standards. Financial incentive programs would be provided for the States for establishing the inspection and titling standards.

Whether this legislation should be enacted involves questions as to which the Department of Justice defers to the Department of Transportation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,  
*Deputy Attorney General.*

---

NATIONAL SCIENCE FOUNDATION,  
*Washington, D.C., June 16, 1971.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reference to your recent letters requesting the comments of the National Science Foundation on S. 976, to amend the National Traffic and Motor Vehicle Safety Act of 1966, and amendments to be proposed to S. 976.

Inasmuch as the legislation deals with an area in which the Foundation has no direct responsibility, we defer to the views of the Department of Transportation and other agencies directly affected by the legislation.

The Office of Management and Budget has advised us that there is no objection to the submission of this report from the viewpoint of the Administration's program.

Sincerely yours,

W. D. McELROY,  
*Director.*

Senator HART. When a Senator from Utah or a Senator from Michigan or any other of us sit in hearings, we like to think that the subject is so important that it justifies the time and effort involved. I do not think you have to be a Senator from Michigan to see that the subjects we are considering today are important.

We are beginning on a legislative road which conceivably may reshape an industry that employs 1 out of 7 people in this country. We are attempting to cut economic loss from auto accidents which now take

a total of about \$2 million an hour. We seek ways to eliminate as much as possible, the \$8 to \$10 billion that consumers waste yearly for auto repairs which either are unneeded, done improperly, or not even done and yet paid for. We seek to lower auto insurance premiums which have reached more than \$1,000 a year for some unfortunate drivers; and further, we seek to lower the number of stolen cars which are costing the public, directly and indirectly, \$1½ billion a year.

Now, if those assignments were not adequate and sufficient for what we are doing, we are attempting also to save lives by encouraging the production of safer cars and establishing an inspection system which will detect the car headed for an accident before the wreck occurs.

Before inviting our first witness, Dr. Haddon, may I inquire of Senator Moss if he has any comment to make?

Senator Moss. Thank you, Mr. Chairman.

I do not have anything really to add. I think you have pointed out the reason that this matter is of importance—national importance—and the waste and loss that our citizens experience in automobile collisions and damage and repair of that damage has reached a staggering figure; and for this reason I am interested in hearing the testimony and hope that we can follow and get some real improvement in the structuring of vehicles so that damages would not occur so easily.

Senator HART. Does the Senator from Tennessee, Mr. Baker have a statement?

Senator BAKER. Mr. Chairman, I have no opening statement and no remarks at this time. I think these are going to be interesting hearings and I look forward to hearing the first witness.

Senator HART. Our first witness is Dr. William Haddon, the president of the Insurance Institute for Highway Safety. We have asked Dr. Haddon to comment on the need for legislation requiring the production of cars which minimize property damage in low-speed crashes.

He is the producer and director, and I suppose he holds the copyright, on one of the most interesting short films that any of us have seen in the last couple of years. I am sure it grated on the nerves of some when he first displayed it to this committee many months ago. I sense now that it has the seal of approval of everybody because everybody seems to talk about it without showing any outward sign of rage. Indeed, everybody now is busy implying that it was their idea to begin with, but I think it was Dr. Haddon's.

#### **STATEMENT OF DR. WILLIAM HADDON, JR., PRESIDENT, INSURANCE INSTITUTE FOR HIGHWAY SAFETY**

Dr. HADDON. Thank you, Mr. Chairman.

It is a pleasure to be here again before you and the other members of this committee. I am here today to present the results of the present series of low-speed crash tests conducted by the Insurance Institute for Highway Safety.

Before doing so, however, a few words of background: The institute is an independent, nonprofit, scientific, and educational organization. It is dedicated to reducing the losses, deaths, injuries, and property damage resulting from crashes on our Nation's highways. The institute is supported by the American Insurance Association, the National Association of Automotive Mutual Insurance Companies, the

National Association of Independent Insurers, and several independent companies.

The institute began low-speed crash tests of new-model automobiles in 1969. Until then, there had been virtually no recognition of the relationship between high automobile repair costs and the designed-in delicateness of the automobiles themselves.

Three basic questions needed answering. First, we wanted to know how much delicateness was being designed and built into new-model cars. To answer this we crashed four of the most popular 1969 sedan models into a standard test barrier at 5 miles per hour front and rear, 10 miles per hour front to barrier, 10 miles per hour in two-car configurations, front to rear and front to side, 15 miles per hour front into barrier. The results were illuminating; for example, in the 5 miles per hour front-into-barrier crashes, the four cars averaged \$200 in estimated repair costs per car.

Then we asked how large a proportion of the total vehicular crash damage low-speed crashes might account for. Working with data provided by a major automobile insurance company encompassing a sample of thousands of auto property damage claim closures during a 6-month period of 1968-69, we discovered that 94 percent were for \$500 or less.

The third question was whether such low-speed crash damage could be eliminated by alterations in vehicular design. In fact, one of the many available on the shelf solutions was presented to the Senate Antitrust and Monopoly Subcommittee,<sup>1</sup> your committee, at the same time by an independent aerospace manufacturer. Some members of this committee may have since seen demonstrations of one or more of the several other energy-absorbing front and rear end design options available to eliminate low-speed crash damage.

With the introduction of 1970-model automobiles we expanded our crash tests to include 12 popular models—the four sedans, four so-called “pony cars,” and four small cars. The filmed results of both the 1969-model and 1970-model cars were presented at hearings of the Senate Subcommittee on Antitrust and Monopoly.<sup>1</sup> The results of the 1969 and 1970 model low-speed crash tests are shown in appendix A attached to my testimony.

As our test results have become known, public and private concern about the problem of needless delicateness in auto exteriors has surfaced. The bills you are considering today reflect that concern. Also a number of State legislatures are actively considering legislation to require that automobiles withstand low-speed crashes without damage; one State, Florida, enacted such a law last year.<sup>2</sup> Further, a number of insurance companies have announced premium reductions to encourage the offering in the marketplace of automobiles that are not susceptible to low-speed crash damage. Finally, there appears to have been an increase in efforts by independent designers and developers to apply long- and well-known energy absorbing principles as a means of providing crashworthy automobile bumpers, and a steady increase in editorial and public demand for solutions to the automobile fragility problem.

<sup>1 2</sup> See reference on p. 53.

Unfortunately, although the techniques for solving the problem have been available for years, the results of our most recently completed series of tests—involving 1971 model automobiles—show that they continue to be ignored in the design and manufacture of new cars being sold to consumers today. The technological remedies remain on the shelf, where they have gathered dust for costly years.

The baseline of low-speed crash damage reflected in estimated repair costs generated in our 1971 model tests on balance appears to have worsened. For example, for the four sedans, the only like models crashed both last year and this year, the average estimated repair costs compare as follows:

When crashed front end into the test barrier at 5 miles per hour, \$215.64 for 1970 models, \$331.69 for 1971 models;

When crashed rear end into the barrier at 5 miles per hour, \$218.66 for 1970 models, \$329.28 for 1971 models;

When crashed into like models front-into-rear at 10 miles per hour, \$558.04 for 1970 models, \$516.40—the only improvement—for 1971 models;

And when crashed into like models front into side at 10 miles per hour, \$499.36 for 1970 models, \$637.76 for 1971 models.

The largely cosmetic, eggshell front and rear ends of new automobiles remain with us in showrooms and on the streets, insuring, for some time to come, the continued operation of a highly remunerative market in replacement parts sales, most of which automobile design has made certain will be made by the maker of the automobile itself.

Many of you may have noticed the new attention that is being paid in some media advertising of new model automobiles to the issues of occupant safety and protection from vehicle damage. In promotions for some of the 1971 models, we have noted claims—albeit sometimes veiled and couched in careful innuendo—of improved crashworthiness of bumpers. As you watch the film of our 1971 model crash test, you will want to pay particular attention to at least three of these.

1. The Pontiac Firebird, which has for the last few years featured what is referred to as the “Endura” front end. A company promotional booklet on 1971 Pontiac models calls the Endura “amazing.”<sup>3</sup> An automotive magazine has described the front end design as “energy absorbing.”<sup>4</sup>

2. The 1971 Buick Skylark’s bumper, of which a company official said during a press conference last autumn:

... (I)t will withstand about four times as much force from any intruding or any impacting object than the 1970 bumpers. So we made a very dramatic improvement in our bumper protection.<sup>5</sup>

3. The 1971 Plymouth Satellite, which features what one automotive magazine called a “heavy loop bumper (which) provides complete protection for recessed headlights and black-out grille,”<sup>6</sup> and which a promotional brochure described as a “massive front bumper.”<sup>7</sup>

Before showing the film, a word about the test procedures used in this series: Our tests are now being conducted by EG&G, Inc., an established leader in the development and use of advanced technology instrumentation and data gathering systems, lighting products and photographic systems. They were conducted at a specially designed and

<sup>3 4 5 6 7</sup> See reference on p. 53.

constructed indoor testing facility. Whereas in the past the test vehicles were towed in neutral into the obstacle—the barrier or second car—by another vehicle, this year's models were actually "driven" into the crash under their own power from a remote control console, thus more closely simulating real world conditions.

Since each vehicle being tested was driven into the test barrier or stationary target car under its own power, in some of the tests, notably the sedans test-crashed into the barrier at 5 miles per hour, the cars were not braked immediately following the first impact. These cars rebounded from the barrier and, since they were still in forward gear, tapped the barrier again—a phenomenon not unknown in real-world low speed crashes, incidentally, as when a motorist is unable in a crash to apply the brakes or, in a standard transmission car, disengage the clutch soon enough to avoid successive collisions. These secondary taps will be clearly visible on the screen as you view the film of the tests.

Senator HART. Doctor, you're explaining that this new film will show cars actually driven whereas in the earlier film they were towed. Is the failure of the 1971 models—or is the still increased costs to repair a 5-mile damage in the 1971 models the result of the different method of putting the 1971 into the barrier than the 1970?

Dr. HADDON. We wondered about that, Mr. Chairman, and it is an excellent question; and as a result, we looked at this very carefully to determine whether or not the second collisions actually caused additional damage.

We asked our contractor, Hydrospace Research Corp. of Rockville, Md., a subsidiary of E.G. & G., to examine data from each of the subject tests. The second collisions, which occurred in three of the 48 tests to date, were not of sufficient force to register any data on floorboard mounted accelerometers which had been placed in the cars before the tests, nor to register on audiotrack records taken of each crash. Also, the damage appraisals on these cars did not indicate any unexpected high values.

We concluded, therefore, that the second collisions were not severe enough to cause added vehicle damage. On the other hand, to more closely simulate real-world events, it would be more realistic to include these secondary taps.

I think the short answer is we do not think so and we have good data to support that position.

As with our 1969- and 1970-model tests, estimating of repair costs following each crash was done by a panel of three automobile damage appraisers. The cost estimates also reflect inflation's toll on crash-car owners, both in terms of labor costs and replacement parts prices. I might add, incidentally, that the increase from last year to this year is not predominantly accounted for by the \$1 increase in labor costs. This is a relatively small part of the increase on average, and much larger increases are apparently coming from the delicateness of the cars themselves and from inflation in the cost to purchase the parts themselves.

In previous years' crash tests, we used the rate—modest even then by national standards—of \$7 per hour for labor. This year we have raised this to \$8 per hour, a rate still considerably below that charged in many parts of the United States today.

The total estimated repair cost after each test crash is shown in a chart included in this testimony at the end of the film. In the film you will see tests involving four series of crashes—front into barrier at 5 miles per hour, rear into barrier at 5 miles per hour, and intervehicular tests of identical vehicles front into rear and front into side, both at 10 miles per hour. The tests involve 12 models of automobiles: four sedans, four small cars including three new domestic competitors to the imports, and four intermediate-sized cars. Now, the film of the 1971 model low speed crash tests. As you view these crashes, it is easy to see why these automobile designs guarantee huge sales in crash replacement parts that are available only from those who possess the specially designed equipment which fabricated the costly, delicate, original equipment parts in the first place.

Mr. Chairman and members of the committee, if I may suggest, if you would care to move to your left you would be able to see this film without parallax.

Mr. Chairman and members of the committee, I would also call your attention to the fact that the projector we have with us is capable of holding single frames and also can be reversed in case you would like to view a sequence another time.

(Film begins.)

A man's walking speed approximates 5 miles per hour. Here you can see a man hitting a wall at that speed with no damage to himself. On a football field men collide at 10 and 15 miles per hour, and at even greater speeds, often without damage.

Here we begin the 5 miles per hour barrier crash tests with the Chevrolet Impala, four-door sedan, for \$367, at walking speed. You will notice the man in each of these, either walking or jogging later in the 10 miles per hour crashes.

Here is the Ford Galaxie, a family automobile, for \$341, at walking speed.

Next, the Plymouth Fury. As you can see, the bumper of this car failed to protect the sheet metal of the quarter panel which was designed to be right out there with it.

This car, the American Motors Ambassador, has so-called "bumper guards." They acted to "roll" the bumper on its mounts and helped aggravate the damage. This was the highest repair cost estimate of the four sedans in this series. Of the total \$415, \$123 was due to radiator and fan blade damage. In addition, the left front door was pushed out of alignment. You can see the results of this walking speed crash.

Needless to say, if this occurred on the road, it would usually involve police investigation, tying up valuable manpower, and all sorts of other problems.

And the VW, \$130.

Now we have the Chevrolet Vega, with an estimated repair cost of \$181, and you can see all the damage to the front end.

And the Ford Pinto.

Again, in this crash here, the AMC Gremlin, you can see how the so-called bumper guards roll the bumper back. You see it turning down.

Here we have the Pontiac Firebird I referred to earlier. This car is equipped with the so-called Endura front end bumper. While other body damage was relatively low, the bumper had to be replaced and refinished, at an estimated cost of \$161.20. Some bumper!

This is the Buick Skylark. It is equipped with the bumper a company official said could take "four times as much force"<sup>5</sup> as last year's models. It allowed the car to sustain obvious massive damage and to record the highest estimated repair cost in the 5-mile-per-hour front-into-barrier crash series—\$427.

This is the Mercury Montego. As you can see, the radiator of this car suffered a leak in the test crash. The radiator and fan repair estimate came to \$100 of the overall \$402 estimate.

The so-called full loop bumper is found on this car, the Plymouth Satellite. Though it generated the lowest repair cost estimate of the 5-mile-per-hour front-into-barrier test series—\$98—still its radiator core assembly needed repair. Notice the radiator leak in the closeup view.

Everyone of these 5-mile-an-hour front-into-barrier crashes should have resulted in zero damage.

And now the 5-mile-per-hour rear-into-barrier crash tests.

This sedan experienced the most damage of any in the 5-mile-per-hour series, either front or rear—\$447. The bumper itself had to be replaced, repairs had to be done on both rear quarter panels, and both rear taillight housings had to be replaced. That is the Chevrolet Impala. You can see the gentle rippling of sheet metal [audience laughter] which, unfortunately, is no laughing matter, and which is what the consumer not only nationwide, but abroad as well, has to put up with.

And the Ford Galaxie—\$318.

Watch on this Plymouth Fury for the rippling of the quarter panel due to the bumper's being rolled into the sheet metal, inflicting the damage of the crash on the weaker, expensive-to-replace structure—needless to say, with expensive damage the result.

And here we have the American Ambassador. How would the driver of this gently hit car get his safety equipment out after the crash? As you can see, the trunk was shattered.

And the VW. Notice that the design of the tailpipes guarantees that they'll be hit.

Notice that some of these repair costs run less than a third of others among competitive automobiles.

Here we have the Chevrolet Vega, and note that these crashes are still at walking speed and are comparable to what cars routinely experience in parking lot and driveway backing maneuvers.

The Ford Pinto. For a mere \$210.

And the American Gremlin. For \$286.

And the Pontiac Firebird again. I should tell you that most of the damage does not show near the bumper itself in this and a number of other crashes. Instead, it happened to the rear quarter panels—rather symmetrically on either side, I might add, as we shall see later on in slides.

Here, the Buick Skylark.

We have been accused, including, of being unscientific because we show someone walking in the background at the speed the car is moving. Apparently this makes it a bit too clear to the people who look at these—the public—how slowly the cars are travelling when they crash.

<sup>5</sup> See reference on p. 53.

And the Mercury Montego. Here damage was sustained by the frame rails, trunk lid and rear floor pan and reinforcements, as well as the expensively sculpted sheet metal. You can see it dimpling all the way up to the door—for \$267.

And here, of course, is the Plymouth Satellite again. This bumper's inadequacy allowed much damage to other, weaker parts of the vehicle structure—again compelling, by vehicle design, the purchase of expensive crash parts.

And now our 10-mile-per-hour intervehicular tests, first impacting one car into the rear of an identical model that is stationary and in neutral.

The Chevrolet Impala. You can see the fellow jogging in the background. Notice the mismatch problem here even between identical automobiles produced by the same manufacturer. For \$501. Here you see some of the damage.

Here you have the Ford Galaxie. When the front and rear bumper designs chosen by the manufacturer for even the same model aggravate damage by failing to mesh properly, as here, a well-known design principle has been cast aside. As an executive engineer, speaking for the manufacturer of this vehicle, testified last year, "Regardless of other requirements, the front and rear bumpers of a given car line must match at design and curb attitudes with no resultant damage to components." \* and here you see the split front bumper, believe it or not, and rear end closeups.

Now the Plymouth Fury. Again jogging speed, mismatch problem, and all of the rest—these carefully designed structures, which you can see. For \$448.

Now here we have coming up the American Ambassador, and I want you to again watch for the bumper guards serving to twist the bumper on its mounts and aggravating the resulting damage. You can see cosmetic junk falling off—some of the junk.

Here is the VW again. This crash gives another excellent demonstration of the bumper mismatch problem. Had these bumpers been designed to meet properly, little damage would have occurred to sheet metal. And yet you can walk down the street and see on parked cars, precisely this sort of thing commonplace in every city in the country. For \$262.

Here we have the Vega again. Note: They don't even come in at the same height, those bumpers; the man jogging in the background; and a small matter of \$521 worth of damage.

Here is the Ford Pinto. Again mismatching bumpers. Also, the impacted car's bumper allowed damage to the rear quarter panel sheet metal, as you will see in a moment. And needless to say, this is not all. You also get all this expensive damage under the bumper, where there should be bumper but isn't.

Here, again, the American Gremlin. Note how the bumperguards of the impacting car's front bumper twisted the bumper out of position and left their calling cards on this rear bumper.

And the Pontiac Firebird. The front end of this car, the so-called Endura design, acts as a battering ram rather than as a properly designed system. As you can see, it left its costly imprint rather sharply on the rear of the impacted Firebird. You will see this a bit better

\* See reference on p. 53.

in a moment in the closeups. That is the result of the Endura bumper on that impacting car.

And here is the Buick Skylark, concerning which we will have a bit more to say later. Now, the front end of the Buick Skylark was designed to have a pointed snout, also. Notice the damage this unnecessary structure sustained in this crash, and the wound it left on the trunk lid of its companion vehicle. Imagine what that would do to a pedestrian, as these, in fact, do do to pedestrians. For children—many of them—this is at head height, and that is the last thing they see this side of eternity.

Here we have the Mercury Montego. Notice the trunk lid that flew open. Again, the front end battering ram left its mark on the rear end of the struck Montego. Notice the disproportionate amount of damage inflicted on the impacted vehicle. You can see how it buries itself right in.

And the Plymouth Satellite. We wish that these did have the competence of design that the term "satellite" implies. The technology exists, gentlemen, to do better than this. Even in these front-to-rear 10-mile-per-hour crashes there is no reason why damages could not have been held absolutely to zero.

And now the 10-mile-per-hour, front-to-side intervehicular crash tests, the last of the series we have completed to date.

And with the Chevy Impala first. All of the General Motors automobiles we crash tested, as this Chevrolet, were equipped with special reinforcing side door beams to reduce the likelihood of intrusion into the passenger compartment by the impacting vehicle, a responsible feature. Note that in this crash test the degree of intrusion is far less than that in the 10-mile-per-hour tests of cars not equipped with such side-door beams.

This crucially important type of device, although first introduced by GM in 1969 models, has not yet been introduced widely in vehicles. A door strength standard was proposed as early as 1967 by the National Highway Traffic Safety Administration—MVSS214—but final action was not taken until October 22, 1970, when the final rule was issued. The earlier proposed effective date of September 1, 1971, was moved to January 1, 1973. Damage costs to the side-struck car, some \$375, are roughly comparable to those for sedans without the beams.

And the Ford Galaxie. This Ford Galaxie also was equipped with a side-door beam. Again, passenger compartment intrusion—but not repair cost—was reduced compared to the cars not equipped with side beams. Incidentally, other Ford models we tested in this series, specifically the Pinto and Mercury Montego, were not found to be equipped with this important safety device, something that I believe has not been publicized especially by the manufacturer.

And here we have the Plymouth Fury. The front fender extension of the impacting car, one of the first pieces to strike the stationary car, shattered and left exposed a sharply pointed fastener which punctured the side of the impacted car. Imagine the damage to a pedestrian speared by that spike. Note that I placed in the record of this committee 3 years ago an example of a head penetrated by a similar design in an earlier model.

Now the American Ambassador. The right front door swung open in this crash, which in the real world would have exposed occupants to

a completely unnecessary hazard. And this, mind you, again is only 10 miles per hour, a jogging speed. Also note the imprint of the so-called bumper guards on the massively damaged side of the impacted Ambassador—and the degree of intrusion permitted by the unreinforced side door structure. So much for this kind of bumper guard, so called.

Next the VW, at a cost for the crash of \$353.

Here we have the Vega again. This new little car on the market also has the stylish—and hostile to occupant, pedestrian and vehicle—snout-designed front end. It sustained, and inflicted, massive damage in even this low-speed crash. \$386.

And the Ford Pinto. Not only did the side window of this Pinto shatter in the crash, showering likely occupants with shards of glass, but it also left a collar of jagged glass in the door frame, ready to snag and lacerate any occupant being tossed back to the side by the car's leveling out.

And here we have the American Gremlin. Note again the dents made by the bumper guards.

And here is the Pontiac Firebird. Again the Pontiac's Endura front end's battering ram contour inflicts heavy damage to the side of the impacted identical car, even though this one is equipped with GM's side door reinforcement beam. It seems that if you put enough of a snout on these, you can even go through the side beam on the same kind of car and get into the passenger compartment. You can see the shower of broken glass hurled into and outside the car. Not only did the side glass break, the antenna-containing windshield also broke and had to be replaced, at a price of almost \$150.

Now the Buick Skylark. Again despite the claims of strengthened bumpers on this Buick model—and if they in fact were strengthened, you can imagine what they were before—the impacting car suffered radiator damage, as it also did in the 5-mile-per-hour front-into-barrier crash and the 10-mile-per-hour front-to-rear crash. \$528 for this crash.

And the Mercury Montego. Notice the battering dam design of this front end again. It insured that extensive damage would occur, including the shattering of the impacted car's side windows. The disproportionate damage done to the impacted car in terms of estimated repair cost is again the effect of the rigid battering ram. As noted before, this 1971 car was not equipped with reinforcing side door beams. Consumers, take note! And that one ran \$828.

The fact, incidentally, that side windows don't need to break is shown by the fact they don't all break in these crashes. Some people can apparently design them so it doesn't happen at even higher speeds.

Now, next we have the Plymouth Satellite. Plymouth's loop bumper design—rigidly constructed and nonenergy absorbing—leaves a deep reminder of itself on the side of the impacted car—again disproportionately inflicting damage in a crash which, in the real world, would have showered occupants of the struck car with glass.

Even in these front-to-side 10-mile-per-hour crashes the likelihood of occupant damage and the magnitude of structural damage could have been largely reduced with proper attention to excellence of design.

(The chart follows:)

**1971 LOW SPEED CRASH TEST RESULTS**  
**Insurance Institute for Highway Safety**

		5 MPH FRONT	5 MPH REAR	10 MPH FRONT	10 MPH FRONT/ REAR*	10 MPH FRONT/ SIDE**	15 MPH FRONT
SEDANS	Chevrolet Impala	367.90	447.00		280.50 221.05	328.85 375.30	
	Ford Galaxie	341.20	318.55		248.15 469.60	241.00 439.35	
	Plymouth Fury	202.25	266.35		201.85 246.80	247.10 306.55	
	AMC Ambassador	415.40	285.20		256.30 141.35	233.25 379.65	
SMALL CARS	Volkswagen	130.75	59.05		81.10 181.75	126.35 227.45	
	Chevrolet Vega	181.30	228.45		276.55 244.60	191.05 195.90	
	Ford Pinto	164.20	210.00		183.35 196.10	151.90 244.15	
	AMC Gremlin	121.30	286.90		253.95 137.65	172.00 329.65	
INTERMEDIATES	Pontiac Firebird	229.00	262.60		77.00 385.60	55.40 458.70	
	Buick Skylark	427.10	226.85		305.75 190.70	354.00 174.50	
	Mercury Montego	402.11	267.35		171.50 469.13	98.85 729.50	
	Plymouth Satellite	98.45	256.35		161.35 241.65	120.95 523.25	

\*In the front-to-rear crashes, the price listed first for each car model is the estimated repair cost for the striking car (front-end damage); listed second is the estimated repair cost for the struck car (rear-end damage).

\*\*In the front-to-side crashes, the price listed first for each model is the estimated repair cost for the striking car (front-end damage); listed second is the estimated repair cost for the struck car (side damage).

Dr. HADDON. Gentlemen, the high base line of damage reflected in these test results is attributable to more than the performance of the clearly inadequate bumpers with which the cars were equipped. It is a product of the overall design of the automobiles—and I might say the design philosophy which seems to be represented so clearly by it—particularly by their front and rear ends.

The question that should concern us is that which examines the use made of the space occupied by the vehicle and its components—whether, for example, the car is heavily laden at its prow and stern with expensive-to-replace cosmetic fringes—costume jewelry—and is adorned with protruding nose cones and upper lip snouts which perform all of the functions of battering rams, or instead is relieved of this pocket-picking ornamentation and, at the same time, equipped with self-restoring, energy absorbing structures.

A few slides<sup>1</sup> will illustrate in detail how the designs of current model vehicles guarantee crash damage. First, some slides detailing what you have already seen in the film—how the bumpers themselves perform by rolling and twisting on their mounts, away from their normal positions, to mangle sheet metal which has been needlessly extended to embrace the outermost extremities of each car, even the bumper mounts themselves—with the public warranted to lose.

The first slide is of the American Ambassador. We have already seen this in the movie. You can see in this closeup how the sheet metal has been placed by design immediately proximate to the bumper, and that the bumper is designed in such a way that it rolls backward to do damage that picks the pockets of the consumers who use these vehicles.

Next we have another view of the American Ambassador damaged in the front to side—the last was front to barrier. Again, the same sort of picture.

Next, the American Motors Gremlin. Again notice all of the damage guaranteed by the design of this car.

Next the Chevy Impala. Notice how that bumper, by its design and the design of the adjacent structure, guarantees that it mangles into the sheet metal even in the low speed crash of 5 miles an hour which produced this pictures—all too common throughout the country and throughout the world, with cars coming from many countries, including the United States, I might add.

Next we have the Chevrolet Vega, rear to barrier, 5 miles an hour. Notice how the sheet metal on the left rear corner has been mangled by the bumper. The bumpers simply do not work.

Next, another picture of the same car, this time, with the same sort of damage, a closeup of the right rear. This is from the rear end to barrier at 5 miles an hour, much the same as going backward into your garage or backing in a parking area.

The next is the Plymouth Fury. This one at 10 miles per hour.

Next, the Buick Skylark. Notice that even the nameplate managed to fall off in this one.

Now some illustrations of how the designs of the front and rear ends, including bumpers, acted to produce damage to side quarter panels of the cars.

Notice how efficiently and precisely the forces of impact are delivered to very expensive sheet metal far removed from the point of impact. In fact, you can see this on both sides, as the next slide shows. Mind you, this is a 5-mile-an-hour, rear-end-to-barrier crash getting both quarter panels.

As I noted during the film, incidentally, the damage is extremely symmetrical, which is not only a comment on our test methods, but also on the design of the car. The cost for straightening each of these quarter panels came to exactly the same.

<sup>1</sup> The slides referred to begin on p. 56.

Next we have the Plymouth Satellite. More of the same. Remarkable how the same kinds of designs produce the same kinds of damage year after year on the same kinds of cars.

Now the Ford Pinto. And you have seen this in the movie. And I must say that those of us who know what is going on are quite familiar with this as we drive in traffic day by day; see car after car as we move slowly back and forth, and in walking down the street, seeing parked car after car that illustrates exactly this pocket-picking design. One could say cotton-picking design also.

Incidentally, you may be curious as to the cause of the dramatic radiator breakage and leakage in the American Ambassador's 5-mile-per-hour front-into-barrier crash test. In this slide you can see the damage, from the inside, to the radiator, how this design allowed the radiator—and mind you, this was at 5 miles per hour, when it should have zero damage, let alone radiator damage—allowed the radiator to be pushed backward into the fan blades, which, because the car was running, chewed into the radiator core, causing the escape of steam and antifreeze you saw early in the film.

Perhaps the most dramatic proof of the function regularly served by contemporary automobile design is in the fanciful—and dangerous—front-end snouts, spearheads and jutting lips styled into today's cars. And I might say this has been going on for a good many years.

The following slides illustrate dramatically what caused the massive damage in some of the intervehicular test crashes you saw in the film:

First, the Chevrolet Impala; second, Ford Galaxie; Chevrolet Vega; Ford Pinto; Buick Skylark; Pontiac Firebird; and Mercury Montego. And again the Mercury Montego, buried deeply—as may happen, one presumes, everywhere these cars are used in actual practice—in the structure of another.

We have noted that, in the course of the rising publicity over improved automobile crashworthiness, some are claiming that it would be impractical now to set even so low as a 5-mile-per-hour no-damage floor for both front and rear ends of cars, and suggesting—and I find this incredible, as I believe the people will and as this committee, I believe, does—that even a two and a half mile per hour no-damage floor be set for automobile rear ends, a slow walk rather than even a fast walk. Gentleman, a man jumping only two and a half inches off the floor lands at two and a half miles per hour. It seems reasonable that automobiles should sustain damage-free rear-end crashes into a barrier at somewhat greater speed—and yet we have seen, in the film of our test crashes, the amounts of damage that those same automobiles sustain at a walking speed of 5 miles per hour.

To cite two other examples, a man landing from a jump of just over 10 inches—less than the distance involved in jumping off a high step—would land on the floor at 5 miles per hour; one landing from slightly over three and a third feet would land at 10 miles per hour.

To this point, Mr. Chairman, I want to comment more specifically on widespread claims that an adequate solution to the problem so dramatically illustrated in these films is a front-end energy-absorbing bumper capable of withstanding a 5-mile-per-hour barrier crash with little or no damage. There is no question that bumpers able to manage energy without damage to vehicle structures at barrier crash speeds up

to and above 10 miles per hour are now, and for some time have been, well within the state of the art, have been on the shelf, so to speak. But at least according to one carmaker, there seems to be a question whether rear-end property damage in low-speed crashes is of sufficient magnitude to justify even a 5-mile-per-hour damage-free rear-end bumper system.

I refer to General Motors Corp.—and I would not refer to a specific company if it were not that I think the quote should be identified—which has circulated an analysis claiming to justify its conclusion that “a separate speed range should be selected for the front and rear bumper systems”—with the rear system set at a much lower range than the front—because “front-end collisions occur two and a half times as frequently as rear end collisions,” according to GM.<sup>9</sup>

If GM's data were representative of the real world, its conclusion might be sound. Based on 13,000 cases under collision coverage written by Motors Insurance Co., its subsidiary, the data say that 58 percent of collisions involved front damage, while only 30 percent involved rear damage. This, GM suggests, means that rear-end damage is much less of a problem than front-end damage.

But it turns out that GM's data, based as they are on what in the insurance field is called collision coverage, and based only on collision coverage, are limited almost entirely to damage to cars that struck something else—another vehicle or a fixed object. Not included, since Motors Insurance Co. does not write property damage insurance, is damage to cars struck by other vehicles, such as those hit by others through absolutely no fault of their own.

We looked at the damage to these struck cars by examining a national sample of approximately 13,000 closed property damage liability claims from one of the country's largest auto insurance companies. The results were quite different from GM's data involving striking vehicles. In our examination 46 percent involved damage to the rear of the car, and only 29 percent involved damage to the front of the car. That is in what are called property damage claims.

Since a figure more nearly reflecting the true role of rear damage in all crashes would include the damage experience both of struck cars and striking cars, we also combined our data with a representative set of closed collision claims from the same company. In result, we found that for every one and twenty-six hundredths collisions involving front damage, one collision involves rear damage—the latter frequently caused to the vehicle of an innocent driver hit by another from behind.

The pacifying assurance that good rear end bumper systems would not be to use GM's term—“cost effective” might also be rather vigorously challenged by the countless car owners whose vehicles each year are mashed from behind.

I also note public claims by some to the effect that providing significant bumper protection front and rear on automobiles would require both considerable extension of vehicle length and vehicle cost. I was not going to mention, incidentally, that the length of vehicles has been going up and down like an accordion at the whim of the manufacturers as far back as I, at least, can remember, and I expect some people here can remember it further than that.

<sup>9</sup> See reference on p. 53.

These and other arguments against improved vehicle crashworthiness are spacious on their face. A policy that provides a safe, damage resistant vehicle would require that snout configurations and fancy tinsel cosmetics be eliminated and their space utilized instead for proper energy management structures, thus both reducing vehicle cost and eliminating low speed crash repair costs. It is a question of how the space occupied by the structure of the vehicle, of whatever length, is to be utilized—by proper energy-absorbing structure which is self-restoring, or by costly, fragile and damage-prone cosmetics.

You saw, for instance, how the sheet metal has been extended right up to and around the bumpers. It doesn't need to be done that way.

By choosing the former option, manufacturers could reduce the initial price of the vehicle or, at worst, maintain it at present levels by elimination of the costly delicacies.

Another aspect of the exterior designs of several of these vehicles flies in the face of the best interests of men, women, and children not only in the United States, but everywhere in the world where these and similar vehicles are used, regardless of country of origin.

Man discovered thousands of years ago that the likelihood and severity of damage to people, as well as to their property, could be greatly decreased if the impacting parts of objects that hit them are designed to guarantee that the forces are spread out rather than localized.

In practice, this health principle is deliberately ignored in design intended to produce impact surfaces that are hard, pointed, rigid, sharp, edged, jagged, or otherwise hurtful on contact with people. Military hardware from all parts of the world, through all the eras of man, illustrates this—witness the edges of swords, the points of spears, warclubs, tomahawks, battering rams, the prows of triremes, and more recently, those pointed shafts of bamboo found along war zone jungle trails.

I would like to illustrate this again with a few quick slides showing our disregard in our environment, our modern environment, for the human beings that are hit so frequently, for whatever reason, by these designs with which we are lacing our entire American environment.

First, the Mercury Montego. Notice the "W-shaped," as it is called, front end. We believe that this serves to trap, for example, children and other pedestrians who are unfortunate enough to be in front of it, and many of these will hit pedestrians—are hitting pedestrians right now. And we believe, in the case of small children, that because of those prows they are not deflected sideways, they can't be under the dynamics of the crash, but instead are channeled under the wheels where they can only sustain, on average, far more lethal, disfiguring, crippling—you name it—injuries than are frequently the case when pedestrians are deflected sideways.

I think that it is about time that all of the American people understood these aspects of their environment.

Here again in the next slide you have the Mercury Montego from another angle. Certainly that impact design speaks for itself.

And I might note, incidentally, that on a number of cars the honeycomb of the grill is made of a plastic which probably doesn't injure as much as hard metal. So one can put this on the front of cars. But now the metal is out there first, sharp and pointed and hard.

In the third slide, again of the Mercury Montego—you have seen this before—notice not only that the central prow is burying itself deeply in the side of the impacted car, but that those vertical choppers on either side are tearing even the sheet metal, as you can see in the foreground.

Next we have the Chevy Vega. Notice the series of prows—pedestrian and vehicle damaging structures. Now this happens to be a design which has a very long history. In fact, if you go back to military hardware, in this case back to the battering rams that were used in the Middle Ages and at other times, you can find precisely this kind of design with a series of points which serve to make damn sure that the forces of the impact are localized so that they destroy structure.

The next slide shows one of these battering rams, the head of an ancient battering ram of many pounds, with precisely this sort of design.

The next time you see that some child was killed or crippled or converted to a paraplegic or blinded, or what have you, by a car, I hope you will think about these things.

Next we again have the Chevy Vega. Again the battering ram designs, the force—localizing structures, whether hitting property or people. This also illustrates that there are many small points on some of these vehicles. And this, too, is a design which has a very long history in military hardware in particular, with such things as the mace shown in the next slide.

Then next we have the Ford Galaxie. More points, macelike points. And in addition to this, many of these vehicles serve to act like choppers. I showed you a vertical chopper in an earlier vehicle. This has some on the sides. And you see them horizontally. You see this here (using electric pointer), for example, on this ridge here and across this point here, and all the way over the other side, and the ridge that doesn't show all the way down the bottom here. And these serve, whether vertically or horizontally, to chop what they hit, localizing the force of the impact. And that is what is going on on our highways, by design, literally nationwide and beyond.

I thought you might be interested that this design also goes very far back. In the next slide, here are some beautifully designed, but correspondingly lethal, Scandinavian ancient bronze axe heads; and you can go almost to any part of the world, to any period of history, and find equivalents.

Next we have the Buick Skylark which has a front beak, this pointed beak right here. I won't even bother again to comment on all the other things. This beak acts precisely like a beak, a bit larger than you see on birds. In the next slide notice that even after the 10-mile-an-hour front and rear impact, this Skylark's beak is essentially undamaged. In fact, if anything, its position is now more treacherous because the lower structure was weaker—the weak bumper problem again. But the sharp beak was still sitting out there after it had cut into the structures which it hit on an identical car. Think of these hitting people!

Now, there are also points on some of these that are more localized. And this, too, has a very long military history. In the next slide we see, again from Scandinavia, some beautifully designed, but lethally pointed structures which make sure that the force of impact penetrates.

Another slide shows the same sort of thing for medieval pole arms, so-called, with all of their choppers and points.

You have already seen the next slide—the pointed structure exposed in a crash of a Plymouth Fury—the same kind of thing is commonplace on our roads in a design which probably had hundreds of engineers working on it. This one, as you remember, was uncovered in a 10-mile-an-hour front to side crash. Notice that it is located in the principal area of pedestrian impact, the right front of the car. And you can visualize where on a pedestrian it would hit, depending on how high the pedestrian was. On a child standing to the height of the front of that vehicle it would penetrate the head. And again there is in the record of this committee just such a case many years in the past, before this vehicle was designed.

In view of what I have just been showing, it can hardly be maintained that using the same lethal shapes for the surfaces of vehicles that can and regularly do impact pedestrians, bicyclists, and other defenseless road users may be excused as an act in ignorance. No stretch of the imagination could suggest that this could be an act of ignorance.

Let me note that the record of this committee served public notice in 1968 that these designs were producing needless spearing and lacerating of Americans—incidentally, with results medically comparable to those produced by devices of warfare.

Eliminating such expensive and needless costume jewelry and substituting design and executive decisions that reflect concern for people will reduce needless human and social, as well as property, damage.

Incidentally, I have refrained by choice from showing you again the close fit between such structures, as I showed you in 1968, and the holes in people that they produce, and needlessly so. But they are in the record in case you want to pull out the not pleasant color photographs which were submitted at that time.

In the April 25, 1968, hearings of the committee<sup>10</sup> I discussed with the committee these pedestrian-be-damned designs, provided medical case studies and photographs showing the unnecessary penetration into bodies of such pointed metal junk sculpture, and placed in the record my letter of December 21, 1967, to auto and truck manufacturers. This letter included the following, and with your permission I quote:

... I am writing concerning the difficult and serious problem of injuries to pedestrians, bicylists and others who are hit by, or who themselves hit, exterior vehicle structures—and the fact that the contour and structure of exterior portions of vehicles often unnecessarily increase the likelihood both of injury and its severity.

As you know, for decades we have been aware medically and from a safety standpoint that structures which localize the forces of impact on the bodies of men, women and children can needlessly contribute to injury, disability, and death. Some 9,300 pedestrians, not to mention bicyclists and others, are killed in the United States each year, and an estimated one-third of a million injured.

Now these are the things that are hitting them, gentlemen; you have seen them on the screen.

Again quoting:

Attention to means for reducing pedestrian and related injuries, and to reducing severity of those that occur, should have just as high priority as accomplishing the same objective for drivers and passengers.

And this should be implemented, and should have been implemented literally decades ago.

<sup>10</sup> See reference on p. 53.

I know you are giving attention to accomplishing this, especially through the elimination of vertical and horizontal external ridges and protrusions. . . .

As it turned out, I was wrong.

Again quoting:

With the increasing interest of physicians and the general public in this entire problem we expect that many examples of structure-injury relationships, useful to all of us attempting to reduce injury and death on our highways will come to our attention and yours. I am passing along two such examples I hope you will find helpful.

Apparently they were not considered helpful.

And finally, again quoting from part of the letter:

. . . Not all pedestrian injuries can be minimized or eliminated through cleaning up the exteriors of vehicles, either in contour or in hardness of structure in impact areas, but gains can be achieved. For this latter reason, I hope you will find these examples—that I am sending to other companies as well—helpful as you work on the ways in which you should approach this area in the future. If we can be of any help in this respect, I hope you will let me know.

Yet another point is often misunderstood. This is the belief that the safety of occupants demands the crushing of vehicular metal. It has been said that occupants of automobiles equipped with undamageable front and rear ends would be exposed to greater crash forces since the vehicles would have to be rigid enough to crash without damage. If this were so, jet airliners would be unable to land without sustaining damage both to themselves and to passengers from the jolt of touchdown. There are about as many other examples of impact-energy management that effectively and repeatedly keep damage from occurring at low and moderate impact speeds without providing rigid structure that causes damage to humans—modern railroad draft gear that absorbs the shock of coupling freight cars, for instance.

Dr. Patrick M. Miller, head of the Structural Dynamics Section of Cornell Aeronautical Laboratory, Inc., has also forcefully disposed of this point.<sup>11</sup> As you may know, Cornell Aeronautical Laboratory has conducted much of the crash testing and research in this field for the Department of Transportation. Dr. Miller said, and I quote:

. . . (W)e do not see any basic incompatibility between designing vehicle structures for occupant safety and also for property damage reduction.

The contention has been made that the vehicle structure should be weakened so that it will collapse and assist in cushioning the occupants during high speed impacts, where occupant injuries and fatalities generally occur. On the other hand, most people agree that the structure must be strengthened to provide for reduction in vehicle damage. The contention related to the vehicle strength as it affects occupant safety is, I believe, erroneous. Indeed, our work indicates that by strengthening the vehicle structure, both occupant safety and vehicle damage aspects of the problem would be improved.

Even though the vehicle damage problem is associated with low speed, 5 and 10 mile per hour collision, while occupant safety is generally concerned with 20 to 60 mile per hour impact velocity ranges, it may be helpful to briefly review some of the results of the higher speed collisions. . . .

And later in the statement he said:

Thus increasing front structural strength to improve occupant safety in higher speed collision is consistent with a strength increased to reduce vehicle damage in low speed collisions.

A great deal more is involved than simply mounting an improved bumper a few inches in front of the present day vehicle, although even

<sup>11</sup> See reference on p. 53.

this first practical step is decades overdue. What we must also be concerned with is a change in the basic concept of vehicle design to serve the public interest and to remove much of the lethality from the crashes of passenger automobiles on our highways—and much of the dollar cost of their impacts as well.

The Insurance Institute for Highway Safety will continue its testing during the coming months. The committee has asked that we return when we have collected further data from our tests. We will be pleased to comply.

I will be very happy now to answer any questions you might ask.

Senator HART. Thank you very much, Dr. Haddon.

I wouldn't presume to speak for anybody in the audience—it is just my impression that this, your most recent film, is even more devastating an indictment of indifference and shortsightedness on the part, yes, first of the manufacturer, but second of all each of us. Before I blame somebody else, I remember vividly last fall standing on the floor of the showroom at the home office of a principal American auto manufacturer between campaign stops actually and taking the time to go around. I stopped most seriously at one of the vehicles that had one of the most dramatic snouts. Except that it looked a little too young for me, I, by God, would have bought it. And I sense it was largely because of that design. So I was wrong, too.

We are all in a sense, until we are sobered by a thing like this, sharing the guilt.

I had hoped actually, had anticipated that after this fourth meeting over a period of 4 years between you and others of this committee, all these discussions, and the PR pitches, that this would have been a meeting where you described the improvements. You might have been critical of timelag, and so forth. But what you are suggesting—and I notice you draw much harsher word pictures this year than you ever did before, and perhaps that's why I get the impression that what you are showing us is worse, not just a gradual improvement subject to criticism of not enough effort to accelerate still further the improvement—you are in here telling us the damn thing has gotten worse. Now is that what you are telling us?

Dr. HADDON. I think it would be an understatement, Senator, to say that it has gotten any better. And certainly considering the time for correction the situation is, indeed, worse.

Senator HART. Well, we shall hear from those who share with us customers the guilt, the manufacturers.

Dr. HADDON. I agree, incidently, if I may, very strongly with your point that this is not merely dereliction, with respect to people at least, on the part of manufacturers. We live in an environment in which children are not told about the hazards of our time. They are told instead about the bears in the forest and the wolves and Little Red Riding Hood. And I think that one aspect of this is that even people who concern themselves with the environment for the most part don't even see the environment of their own vehicles and the other vehicles about them.

Senator HART. I am glad you underscored it. I made note of the word "environment"—you used it describing one of those vehicles with sword designs and suggested that this was part of our environment, and you are right. The environmentalists don't give that broad a defi-

nition. And when we talk about the environment and what we have to do to fix it—we always think it costs so many billions of dollars that maybe we haven't time left to reverse the deterioration of lands and air and water. We forget that the environment includes what you showed us this morning. I suppose to produce a bumper at a level the same as the bumper on the same manufacturer's vehicle and others without the frill of the Y or the prong or the sword would probably cost less, wouldn't it? I don't know.

Dr. HADDON. I find it difficult to believe that if one wanted to reduce the manufacturing cost of these cars, such as the prow of the Montego, for example, and others, that one couldn't find a way to do it by reducing the amount of junk extended forward. And backward, for that matter.

Senator HART. And that is something that we can do to improve the environment quickly. Unlike the problem of Lake Erie, we can do something about this aspect of environmental damage quickly, if we would.

Dr. HADDON. Yes, although I think that it is pertinent that, as I believe I intended to suggest in part of my statement, each year we slip it is not just a loss for that year in penetrated people and lost property, but rather the entire period is slipped that those vehicles will be on the road, which will be more than a decade. So these designs are not just 1971 designs. They are the American environment in substantial part, the hazards of the American environment, until into the 1980's.

Senator HART. Again reflecting on how those of us who have a responsibility to be aware and think we are doing what our assignment requires but still don't meet it, I came loaded with a list of questions that went to the cost, the \$7 billion of premiums, for example, for the accident crash coverage, the \$3.7 billion-plus for repair costs, and you know the list of questions that would be developed under the business of how you can reduce the damage to property. I came with a couple of questions hoping that you would endorse that aspect of the bill that I filed that asks for a study and evaluation of standards to protect the occupant of the vehicle. But confessedly, I was thinking largely in terms of the dollars that we could save. And only after seeing your film am I reminded again that the first concern should be with respect to life and personal injury.

You raised yourself what is often used as the explanation for the fragility, the delicacy of the structure: That unless the metal ripples, you are going to have very serious consequences to the occupant. You cited, I think, the Cornell report that says this is not necessarily true. But it remains almost an article of faith among those of us who are less informed in the area.

Following either the first or second set of hearings—either in the Committee on Commerce or the Committee on Antitrust, I do not recall which—at which you testified, one of the presidents, at least at that time a president of one of the major American automobile manufacturers rather profoundly reminded us in Detroit that we already have a vehicle, if you want it, that takes care of the problem. You and I and the committee were seemingly being critical of him and his colleagues. He said, "We build tanks here, too." And I remember a newspaper editorial suggesting, "Well, of course, what is wrong with those politicians down there?"

Now are we absolutely sure that the rippling effect which produces the high repair costs can be eliminated, with the result of lesser collision costs and without physical injury increases?

Dr. HADDON. Mr. Chairman, it is important—as the committee's record shows very clearly and, in fact, a good deal of comment from other sources available to the committee shows very clearly—first, that there is a great deal of separation between the speeds at which the overwhelming bulk of the property damage is sustained and the speeds at which injury progressively becomes a problem with higher and higher speed.

Second, within that set of conditions, we are 100 percent positive—and I quoted an independent expert, Dr. Miller from CAL, in my statement—that one can provide effective energy management at low speeds, especially in front- and rear-end collisions, in ways that in no sense are incompatible with protecting people and which, if properly done for many of these vehicles, would improve the protection that is given to those people inside.

Now the question in science, in physics and engineering, is not whether or not one has to absorb energy. One has to absorb energy when something that is moving stops or is stopped. The question, rather, is how do you do it?

You can do it erratically, as you have seen here, by chewing up all sorts of expensive structure, structure that by design is expensive. Or you can do it in a controlled way by energy-managing devices which do not damage any structure.

And in fact, you have also in the record of this hearing—I believe from the October 6, 1969, record; I guess it was in the Senate Antitrust and Monopoly Subcommittee, and I believe you were chairing it, and you implied this earlier—you have not only a written record, a statement, but you also have a movie showing this done with modern devices that are inexpensive and that have been used for many, many years in a number of applications, especially on aircraft landing gear.

You can imagine what would happen if one had to crush sheet metal and perhaps damage occupants every time one put down a light plane or a jet aircraft—if that was how one managed the energy of the vertical jolt, or on an aircraft landing on an aircraft carrier, for example, where they land in a vertical vector at a speed of up to 15 miles an hour and above. In fact, the military specifications for the so-called sink rate that has to be tolerated by military aircraft landing on carriers are somewhere in the vicinity of slightly over, if I recall, 15 miles an hour. So you can imagine what we would have to do as a country, in our military operations or commercial aviation or general aviation, you name it, if each time this happened, to protect people, the only thing we could do would be to chew up a lot of expensive structure. We simply would not tolerate it, and have not tolerated it.

Perhaps this is because the purchasers of aircraft are a bit more sophisticated than the general public, who do not know that it is not necessary to damage the structure.

In addition to that, in the statement from Gerald J. Lynch, the board chairman and president of the Menasco Manufacturing Co.—a leader in shock attenuation devices and the manufacturer of some more than 100,000 military aircraft and other aircraft landing gear systems—as his statement said—October 6, 1969, again, in your record:

Now let us consider cost. The cost of an average installation has one or possibly two principal ingredients; namely, the cost of the shock isolators themselves, and the incremental costs, if any, of integrating the isolator into the vehicle. We estimate that a set of eight shock mounts in volume production would cost approximately \$25 per vehicle, exclusive of selling expense, administrative cost and profit. Our estimate is based on our knowledge of material costs and what we know to be the manufacturing potential of the automotive industry.

I might add, as an aside, that I believe this man was the head for some time of one of the Ford subsidiaries, and he presumably knows what he is talking about.

Again quoting:

Now we cannot estimate the incremental cost, if any, which would be incurred in integrating the bumper system on new model cars. Each manufacturer must identify and evaluate for himself the interacting trade-off decisions with respect to cost, weight, performance, et cetera, in firming up his final design. On the basis of our own understanding of the problem of integration on a specific vehicle, the incremental cost, if any, would not be significant.

As a matter of fact, it is conceivable that design trade-offs could result in a net reduction in the total cost of the vehicle.

And I think that is obvious when you are in this ball park, you could easily take off all of the sculpture you have been seeing in the film and slides.

I hope that answers your question.

Senator HART. I hope this is helpful in correcting the folklore about this thing.

Senator Moss, I know, has questions. So let me raise a couple and then turn to Senator Moss. And then if there is time remaining, we can continue; and if not, we will ask you please to file answers to questions that we will furnish you.

You talked in your statement about the designed-in delicateness—an expression you used several times—designed in delicateness.

Now is the delicateness purposely designed in? Or is it designed in in the sense that the engineers, the automotive engineers just have not paid attention to building cars capable of experiencing low-speed crashes without damage?

Is it thoughtlessness? They just have not thought about the crashes, the repair bills following on after? Or have they thought about it and nonetheless, for some other reason, intentionally designed it in?

Dr. HADDON. Mr. Chairman, I believe that it is entirely accurate to say that the manufacturers of many of these cars are exquisitely expert in estimating exactly what their manufacturing costs are, exactly what stores of replacement parts they must or should or can place in their inventory, and that they are perhaps among the leaders in the world in management expertise of this kind.

I am not interested, nor would I have any way of knowing, whether or not they do this as a matter of deliberation. But I think it should be obvious to us all that they do it knowingly.

Senator HART. Speaking now to your insurance experience, if the delicateness was designed out, how would the insurance companies react? And, specifically, what would be the savings that one could anticipate being passed on to the consumer of insurance?

Dr. HADDON. I should recall first, Mr. Chairman, that I and my organization are not involved in any way in pricing or rating. We are not an insurance association. And frankly, I could not give you an answer to that question.

But I would point out that, as I believe many of us here have seen, there have been advertisements and public statements by several companies that if they only could get a car that could merely sustain no damage at the walking speed of 5 mph, front and rear into a barrier, they would cut their premiums and pass this along directly to the people who purchase their insurance. And I believe the offer has stood now for some time, the various offers, and as yet it still is not met.

Senator HART. If we are determined that we should design out delicateness, or have it designed out for us, I take it there are three ways to go about it:

Have analyses made such as you have made so that each car, when it sits on the floor of a showroom, has a rating on it; and the theory would be that people would buy those cars rated least delicate, and this would encourage the industry to build more cars of that kind.

Or—this would be a variation on it, which is why I asked you the preceding question—tell people how much the delicateness factors will cost them or save them with respect to each of the cars that are offered for sale rather than giving them some sort of an abstract rating of susceptibility to damage of each car. We would tell them that insurance for  $x$  car would cost  $x$  dollars; and for  $y$  car it would cost  $x$ -plus-\$200.

Or, the Government could require certain levels of protection against delicateness; sort of giving a minimum floor of assured protection to the buyer.

Now as you have looked at it, what is the most effective way to eliminate the delicateness? Or should we crank up on all three fronts?

Dr. HADDON. I think you have summarized the alternatives very well, Mr. Chairman. In this hearing, after all, to some extent we are publicly rating automobiles—at least, publicizing their huge variations in susceptibility to damage, and that none of them meet acceptable engineering standards.

As far as your second point is concerned, there is already differential rating by many companies nationwide among the many States on “muscle” cars because of the substantial excess losses associated with the operation of such cars, for whatever reason. And in fact, one hears that this is—although I have not seen any sales figures to support this—one hears that this has substantially blunted the push of some manufacturers to put these cars into the hands of increasing numbers of consumers.

And of course, in the third case, there are opportunities, and I think requirements, for Government in connection with this public problem. I tend to hold the old view that issues which affect all of the people are all of the people's business. And that means, as well, the business of the agency that has been set up to regulate this sort of thing.

So my rather long answer is that I agree with you. I think that all three should be used, in spades; that things are proceeding in that direction; and that a great deal more needs to be done in all three areas.

I would say, however, that I believe that as far as the Federal Government is concerned, it is not the most desirable approach to write into Federal legislation specific performance requirements for bumpers. This would tend to freeze technology. I think that, rather the regu-

latory agency that was set up by the Congress should in fact be the one to be given needed new responsibility for going into all of the technical details, but with a clear forceful indication of intent on the part of the Congress that it means for the agency to move vigorously in the public, rather than the private, interest.

Senator HART. Certainly we better find out from that agency why that build-your-bumpers-at-the-same-level regulation you commented on in your prepared testimony is still being reviewed. I cannot find the place, but you did tell us that several years ago.

Dr. HADDON. I do not recall, Senator, but in any event, I think that it is important—although I did not come prepared to discuss your bill or that filed by Senator Lloyd Bentsen of Texas—I think it is important that authority is needed within the Department of Transportation, clear authority that cannot be argued to the point of delay for years in the courts, for DOT to set standards on the basis of property damage as well as on the basis of reducing injury to people.

Senator HART. Well, when we suggest that we legislate authority for the Department of Transportation to set property standards you caution us not to spell out any particular standard in the legislation less than 10 miles per hour. Is that correct?

Dr. HADDON. That would be considered advisable.

Senator HART. I would predict or anticipate that responses from the industry would run that it either cannot be done, or it can be done but it will cost more than it is worth to get into the business of property. They were reluctant when we proposed to move toward safety standards and now that is accepted; but they would still argue that property loss reduction standards would not be worth the cost, or that "the Government won't give us enough time, leadtime, when they set them."

Now, you have told us that cars can crash at low speeds without sustaining damage. Can we confidently anticipate that if authority is assigned to the Department of Transportation to set property loss reduction standards for automobiles, that it can be done without destroying the esthetics, without major redesign of existing vehicles?

Dr. HADDON. A simple answer is: There is no reason whatsoever to destroy the esthetics. And I believe that, if you can get them on the record, designers for the auto companies will tell you precisely the same thing as they have told others.

I would, if I may, like to add an addendum to an earlier comment. One of the most flagrant bits of misinformation, I think, that has been disseminated by some over recent years was referred to by you earlier, and that is that vehicles, to be safe, have to be like tanks. It simply is not so. In fact, a tank design is a bad design because of its rigidity—because its rigidity in effect transmits the force backward to the people rather than absorbing the energy between the people and the extremities of that particular kind of vehicle.

I just wanted to get that on the record.

Senator HART. I am glad you did.

I hope those editorial writers will read the record, those fellows who wrote that magnificent editorial pointing out how wise the manufacturer was to point out that we had tanks. I hope they read that.

What about cost? Would new energy management systems cost hundreds of dollars? What do you estimate with respect to the cost-bene-

fit ratio? Would any necessary cost increase be offset by savings that would result?

Dr. HADDON. The essential question is how it is done; if it is done properly, it should not.

And again I would refer you to the statement by the head of Menasco to which I referred earlier, and present in the record now, made a year and a half ago.

Senator HART. Have you any idea how long it would take the auto industry to put energy management systems into production?

Dr. HADDON. I suppose the answer to that is the same as the answer to anything else that that industry chooses to do: It depends on how much push it gets behind it.

Senator Moss. Will the Senator yield to me right there?

Senator HART. Yes.

Senator Moss. First of all, let me say that I think your film was excellent. In these days when we read about the large cost of production of some of the epics that are filmed, I think perhaps you have all the records when you put on all those dollar signs on what every one of those crashes cost. But it certainly is dramatic and telling.

Along the line that Senator Hart was just pursuing about the cost of installing energy-absorbing designs on our vehicles, I am reminded that a lot of top executives of the auto industry have recently been making speeches, and they said that the Federal safety, emission, and property loss reduction standards are going to cause cars to cost as much as \$1,000 more by 1980.

Now the staff advises me that in their discussions with the industry executives, this includes an inflation figure of about \$500 [laughter], but I would like to point out that Mr. L. B. Bornhauser, vice president of quality and safety of Chrysler, made a speech recently in Detroit on February 10, and I would like to read a quote from his speech, and then perhaps get your comment on it:

If our industry does not find new ways of meeting the public demand for safer, more reliable, more serviceable vehicles, it could lose the initiative for innovation and change to the regulators, the lawyers and the underwriters. Remember in the 1960's we met the public's demand with the strategy of proliferation; the public wanted greater choice, more variety in models and body styles, two-door and four-door versions of hardtops, coupes and convertibles. It wanted more trim coats, more options and more accessories, from hood scoops, mag wheels and wood-grained steering wheels, to stereo sound systems, electric windows and automatic temperature control. In the 1970's there was a new demand for better quality, for cars that are sure to start and heaters that will always work, especially on mornings like this, for cars that can be maintained and repaired easily and inexpensively, for cars that protect passengers and do not pollute the atmosphere. Our industry met the demands in the 1960's and I am convinced we will meet the demands in the 1970's. But this will take some fundamental change in our product strategies. I think we will see automobile companies reduce the number of models and body styles that they offer. We have already seen all of the manufacturers drop convertible models from most of their lines. I think we will see each manufacturer standardize parts as a way to reduce costs, simplify manufacturing operations, and help solve dealer inventory problems. I think we will see the whole industry move away from the frequent and extreme model changes. Styling and model change will always be a basic part of the automobile industry, but in the 1970's basic product innovations and improvements that make vehicles safer, more reliable and more easily serviced will be even more important.

And that's the end of the quote.

Now do you see this coming about by the automobile manufacturers, this optimistic statement?

Dr. HADDON. Senator, we have all heard optimistic statements before, and I think that the proof of the pudding is in the eating. And a good deal of pudding needs to be eaten to swallow in retrospect some of the statements we have heard.

I would like, if I may, in response—I think it is relevant and it certainly has been widely disseminated—to show you an advertisement which appears in the February 26, 1971, issue of Life magazine.

As you can see, and you may have seen this ad, it is at the top of a two-page spread, and it speaks I think, very interestingly—I expect unwittingly or inadvertently—to this cost issue.

On the one side of the page, the right-hand side, is a picture in outline of what it refers to as the most popular six-passenger car in 1959.

This is an ad placed by Mercury, the Lincoln-Mercury Division of Ford. It says across the top: "Return of the Real Dollar," and the title is: "Mercury Montego's \$2,798 price buys you more car today than 12 years ago." And the 12 years ago was 1959. It gives the 1959 price as \$2,724 and the 1971 six-passenger Mercury Montego price as \$2,798.

Now what else does it say? It says: "The things that make Montego a better value than 12 years ago"—and you remember that there were some pretty expensive materials in the crash films shown in the design of that car—"also make it a better value than any other six-passenger car today."

But what are the things they take credit for? I will just read around each car so I cannot be accused of picking only the ones that fit my point.

First of all, "front tread," and it gives the number of inches. Next, "dual brake system, self-adjusting brakes." At least one of those is required by a Federal standard. I have no doubt that if you check the public record you would find that at the time that every one of these items now required by Federal standards and now claimed—entirely properly—by the manufacturer as something extra that they are providing, you would find, that there were all sorts of objections that these would cost unbelievable sums of extra money which would undoubtedly have to be added on to the price the poor consumer would have to pay.

Then the next item is a "6-cylinder engine." The next item: "wood-grain vinyl paneling on the dash." The next item, "printed electrical circuits in instrument cluster." The next one, "energy-absorbing steering column with locking features"—two required features that were supposed to be so expensive. Next, "head restraints," also federally required. Next, "flow-thru ventilation." Next, "exhaust emission control system"—another Federal requirement, and although I am not familiar with the details of that or the record, I expect there also it was claimed that it was going to cost a great deal. "Bias-belted tires, rear tread, the overall length, and wheelbase."

On the other page, they go through the same items, mentioning, for instance, single brake system. That was before the Federal Government got into the act and required it to be tightened up so if the system failed you would have some chance of stopping with a backup system.

They go on and mention "rigid, nonlocking steering column." They could have been more accurate—it was in fact a spear aimed at the

driver's chest—but they would have scared people to death. "No head restraints, conventional exhaust system," and so forth.

And yet according to this ad, if I read it correctly—and I think I do—a difference of considerably less than \$100 between those two cars over a period of 12 years.

Now obviously, pricing of automobiles and their manufacture is not this simple, but I think this is one testimonial to the fact that these things do not have to cost more, even over a period when there was a good deal of inflation in just about everything.

Senator Moss. I appreciate that answer because of the constant resistance we hear that "this is going to raise the price of automobiles so greatly," "that the consumer will be severely injured." And then, as you point out, when the automobile manufacturer is required by Federal law to do it, he turns it into a virtue by saying, "Look at all these extras we are going to give you." And actually the price of the car, in this instance at least, did not go up. The buyer got all the extras without paying a lot of extra money.

As I interpret your testimony, you believe that there could be adequate designing of energy-absorbing bumpers and exterior parts of the automobile that not only could reduce this dramatic damage that we see there, but could give even improved protection rather than loss of protection to the occupants?

Dr. HADDON. Yes, sir.

Senator Moss. And that the expense would not be exorbitant, would not be anywhere near this \$1,000 per model more that we hear the scare words about?

Dr. HADDON. That is correct. We always seem to hear about the cost of things to be added, but we do not hear about the costs that do not need to be added or that can be taken off.

Senator Moss. One other thing about this standardization that Senator Hart mentioned. Another thing that is often said in criticism, is that a requirement for this kind of protection device would cause cars to look alike, like peas in a pod. Do you think that this is necessary?

Dr. HADDON. No, sir. I think we have had adequately demonstrated to us over a period of 70 years the ingeniousness in styling, granted basic structure, that can be produced in this field.

Senator Moss. I want to ask you one thing about our insurance industry. Your experience in the Highway Safety Bureau has given you great credibility, from what I hear, with the insurance industry, and I just wondered if you know whether action is being taken by the insurance industry, individually or collectively, to establish research repair centers similar to the action taken by the British when they established their research center at Thatcham to control the costs and improving the standards of vehicle repairs?

Dr. HADDON. I cannot give you any complete answer to that, but I have myself visited the Thatcham facility and a number of people within the insurance industry have visited it as well. There have been some discussions—we ourselves would not typically be involved in such discussions.

It certainly offers an interesting example of looking at the process of repair, once damaged, and of finding facts that can be used to force less expensive repair problems.

Senator Moss. So it would be a forward step if this were done in our country; is that correct?

Dr. HADDON. It might be. But I would like to know more about that approach before reaching a definite conclusion.

Senator Moss. Well, thank you. I realize we have extended this hearing over a long time and we have run late into the lunch hour. It is fascinating, and I am sure that this committee will want to continue to pursue with vigor some of the things you have presented to us here this morning.

I appreciate the chairman's allowing me to get those questions in.

Senator HART. I apologize for not turning it over to you earlier, and I appreciate the questions you have asked.

On that business of cost, what would be added? How tough would it be to trim out some of the weaponry, as you describe it, in the front of the car?

I could not stake my life on the preciseness of the figure, but it is in the range of \$2 billion that the American automobile manufacturers spent on tools and dies for the model change of last year, about \$2 billion amortization for special tools and dies used in connection with model changes of that year. So there is money around to produce vehicles which are, as you put it, environmentally compatible and, as other people would say, less fragile and less threatening.

My last point before you leave—and we will ask you to respond to a series of other questions for the record, if you would, in writing—I am reminded of it when you say it is not just this model year that produces the kind of threats to life and the costly property damage. They are with us for as long as that car is on the road, which is for a long time. I feel strongly that the Federal Government has not moved fast enough and tough enough to ensure that there is honest-to-goodness periodic inspection of vehicles on the road.

And here again Michigan, which ought, in this field, to be in the lead, still does not have mandatory automobile inspection, and there are 20-odd other States that do not. Part of it is the experience that some of us have had with sloppy, really worthless kinds of present-day inspection systems.

From your background and experience, what counsel do you give us as to the desirability of annual—"periodic" I guess is a better word—inspection of vehicles?

Now I would throw in even new car inspection to outrage everybody, but at least inspection of used vehicles.

Dr. HADDON. The area needs much attention. As the person substantially responsible for the Federal standards for State governments with respect to vehicle inspection, which is nowhere, as far as I know, being adequately met or completely met, I feel very strongly on the point.

There are aspects, also, of that standard which are simply being neglected—I think that would be the gentle way to put it—I believe, everywhere in the country.

Let me give you a specific example. One of the requirements, as I recall, is that records be kept in inspection stations of the defects, the shortcomings of the vehicles that come through those inspection stations, and these records are to be collected, tabulated and at least annually published by the States so that the public would have the bene-

fit of knowing, as they do, for example, in Sweden, which vehicles have what failure rates on vehicle inspection; and that is simply not being done. It is one of the many consumer issues that is being neglected. There are others.

Senator HART. This goes to protection of life and property?

Dr. HADDON. Yes, sir.

Senator HART. I have found, in leafing through for the fifth time your prepared testimony, the proposed regulation to which I referred earlier. I thought it had to do with bumper levels; and it refers to that side door bar, or whatever you call it—reinforcig side door beam. "A door strength standard was proposed as early as 1967 by the Highway Traffic Safety Administration, but no final action has been taken."

You dramatized the value of that. And I remind us on the committee that we better find out how come the long delay in that.

I was confused; I thought it was the bumpers. Actually the bumper, where you cite a Ford executive engineer saying:

Regardless of other requirements, the front and rear bumpers of a given car line must match at design and curb attitudes with no resultant damage to components.

And when we get that speech as a fact, we will assemble and say "thank you."

There will be other questions directed to you. Thank you very much.

Dr. HADDON. Thank you, Mr. Chairman.

(The questions and the answers thereto follow:)

MARCH 24, 1971.

Dr. WILLIAM HADDON, Jr.,  
*President, Insurance Institute for Highway Safety,*  
*Washington, D.C.*

DEAR DR. HADDON: In order to clarify further the record of the March 10, 1971 hearing before the Senate Commerce Committee, I am submitting the following questions to you and would appreciate your written responses:

1. Do you know if bumper guards could be applied to existing vehicle bumpers which will provide some additional protection to the vehicles now in use?

2. Do you know of any individual insurance company or an industry plan which would assure that the cost savings from energy absorbing bumpers will be passed along to the insurer?

3. Have you made any projections as to the potential savings less delicate cars would afford to the motoring public?

4. Do these projections take into account possible cost increases in vehicle manufacturing that may be passed on to the consumer?

5. Do these projections take into account the savings resulting from the potential reduction of damage of speeds in excess of those for which energy management systems are designed?

6. In your statement you say that 94% of certain property damage claim closures were for \$500 or less.

a. Approximately what range of crash speeds are likely to produce \$500 of pay out by insurance companies?

b. Is it possible to determine accident frequency at various precise impact speeds in order to ascertain the speeds at which the bulk of our "Fender-bender" accidents are occurring?

7. In your testimony you take issue with General Motors' position on frequency statistics in front-end collisions as compared to rear-end collisions. At pages 25, 26 and 27 you discuss your findings as compared with GM. Can you provide the Committee with the details of your findings, including statistical bases for such findings?

8. How can property loss reduction standards reduce pedestrian injury?

9. Does the Secretary under current law have the authority to issue standards which would afford pedestrian protection from the kinds of designs you have described in your testimony?

10. The evidence before the Antitrust Subcommittee clearly establishes that as a minimum about  $\frac{1}{3}$  of the general repairs are improperly done for a number of reasons, not the least of which is the inability of many of the mechanics to correctly perform the repairs they undertake. Now it seems to me that  $\frac{1}{3}$  of the general routine repairs are unsatisfactory, and an even larger number of the more difficult crash repairs are probably unsatisfactory and indeed possible grossly unsafe. It was for this reason we included in this bill a provision requiring inspection after vehicles are involved in crashes which damage safety related mechanisms. Here again it seems to me that the insurance industry's own interest can be served by such post crash inspections. First, you would know that you got qualified repairs for the money you paid; and secondly, you can be sure that the repaired vehicle would not again be involved in a subsequent accident due to faulty repairs.

Does the insurance industry have any estimate of the relative cost benefit ratios for inspections as that might result in a savings by preventing accidents?

11. The life insurance people make an effort to determine the condition of the people they write life insurance on. Yet under the present system of auto insurance there appears to be a lack of concern by the industry about the condition of the vehicles they insure.

Is the insurance industry making any effort to determine if the mechanical condition of vehicles is a positive factor in accidents?

12. This bill provides for inspection at the time of transfer of title. Wouldn't such a provision guarantee that the vehicles insured would at least meet minimal safety requirements?

Thank you very much. The Committee certainly appreciated your March 10th testimony.

Sincerely yours,

WARREN G. MAGNUSON,  
*Chairman.*

INSURANCE INSTITUTE FOR HIGHWAY SAFETY,  
Washington, D.C., April 30, 1971.

The Hon. WARREN G. MAGNUSON,  
*Chairman, Senate Commerce Committee,*  
*U.S. Senate, Washington, D.C.*

MY DEAR SENATOR MAGNUSON: This is in response to your March 24 queries. I regret that I have been delayed in answering by heavy travel since.

1. As indicated by the films and test results shown to the Committee and as discussed in my testimony, the vertical bar-type "bumper guards" such as those now found regularly on some cars seem to provide no additional protection, and may indeed be aggravating damage in at least some types of low-speed crashes.

2. According to press and advertising copy, a number of companies are offering collision insurance premium reductions for vehicles whose manufacturers have provided front- and rear-end damage protection systems capable of eliminating barrier-impact damage at speeds even as low as five miles per hour. Details of such offerings would be available from either the trade associations representing those companies or from the companies themselves.

3., 4., & 5. No manufacturer has made public the extent to which vehicles sales' price and manufacturing costs are now unnecessarily inflated by sheet metal and other sculpture placed in proximity to both front and rear bumpers, or the extent to which this will be true in case of the design planned for future years. In addition, no manufacturer has made public the extent to which sales of new cars are inflated because the designed-in delicateness of contemporary cars unnecessarily makes many cars involved in low-speed crashes a "total loss." Nor has any manufacturer publicly indicated its manufacturing costs and the amount, if any, that it intends to further increase its vehicles' sales prices because of the addition of low-speed energy-managing, no-damage front- and rear-end design. Thus, we are making no projections in this area at present. However, as noted in my response to a question by Senator Hart during the March 10 hearing, it may well be that damage resistant front- and rear-end car design can be made available to the public at no increase in vehicle sales prices, or at a reduction in price. Savings produced by eliminating costly sheet metal sculpture could quite likely more than offset the cost of equipping automobiles with bumper designs that effectively manage energy—without damage—in such low-speed crashes as those at five, ten, and fifteen miles per hour.

6. a. and b. Since the research in this field has not yet determined with sufficient precision the frequencies and interrelationships between such factors as the various real-world crash configuration, speeds of impact, and objects striking or struck, a precise answer is not yet possible. Such research is possible, though pesky in design and execution. However, as our findings presented in the March 10 and prior hearings indicate, present cars are so delicate that 10 miles per hour car-into-barrier and front-to-rear car-to-car crashes commonly produce amounts of damage in excess of \$500.

7. A survey was conducted by Allstate Insurance Company of all claim files closed during February, 1970, involving a claim under property damage liability or auto collision coverages. Approximately 13,000 claims of each type were surveyed. The Institute obtained its data from these surveys. These were the basis for the statements concerning the frequency statistics in front- and rear-end collisions.

Each claim in the survey involving damage to an automobile had the collision impact point coded, using a coding system based on the 12 numbers of a clock face. For example, a direct rear-end impact was coded as "6", a direct front-end impact was coded as "12", codes "5" and "7" represented off-center rear-end impacts and codes "11" and "1" represented off-center front-end impacts.

To obtain the impact frequencies for rear-end impacts, the number of claims with impact codes "5", "6" and "7" were summed and then divided by the total number of claims. Similarly, for front-end impacts the number of claims with impact codes "11", "12" and "1" were summed and then divided by the total number of claims.

Front- and rear-end impact frequencies were obtained, as described above, separately for property damage liability coverage and collision coverage claims. For property damage liability coverage claims the frequency of rear-end impacts was 45.6 percent and the frequency of front-end impact was 28.9 percent. For collision coverage claims, the frequency of rear-end impacts was 21.7 percent and the frequency of front-end impacts was 56.4 percent. Combining the two sets of results produced a ratio of front-end impact to rear-end impacts of 1.26:1.

8. The short answer is: by eliminating designed-in features of car exteriors that produce both unnecessary dollar losses *and* unnecessary pedestrian injuries, i.e., pointed, sharp, spear-headed and other force-localizing configurations. The detailed basis for our answer is contained in my direct testimony and in the question and answer portion of the March 10 hearing. I note also that placing the bottom of the bumper too high can force small children downward under the car, and that hardness of striking surface also increases injury unnecessarily.

9. Yes!

"The committee was likewise made aware of the substantial needless hazards to pedestrians presented by external fins, ornamental protrusions, sharp edges, stylistically angled bumpers. . . .

"Thus the bill is intended to reach not only the safety of driver, passenger, *and pedestrian* (emphasis added), but the safety of those who must work with or otherwise come in contact with the vehicle while it is not operating." (Committee Report on Traffic and Motor Vehicle Safety Act of 1966, Senate Committee on Commerce, Calendar No. 1271, Report No. 1301, June 23, 1966.)

10., & 11. These questions should be addressed to the trade associations representing the insurance industry. This Institute has not developed data on car repair quality or the cost benefits of vehicle inspections. Incidentally, I would point out that inspections such as you describe, if performed, should be directed at seeing to it not only that vehicle-caused accidents are prevented in the future, but also that vehicle features intended to protect people and their property *in crashes which do occur* have been restored to original operating condition.

12. This would depend on the type and quality of any such inspection. Such questions have been extensively discussed in "Safety for Motor Vehicles in Use," a report by the Secretary of Transportation to the Senate, June 1968, pursuant to requirements of Section 108(b)(1) of Title I of the National Traffic and Motor Vehicle Safety Act of 1966 (Document No. 103, GPO Catalog No. 90, available for \$.50).

Sincerely,

WILLIAM HADDON, Jr., M.D.,  
President.

Senator HART. We will adjourn, subject to the call of the Chair.  
(Whereupon, at 12:50 p.m., the committee was adjourned, subject to the call of the Chair.)

## REFERENCES

1. Hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, U.S. Senate, Parts 3 and 4 (23-458) :  
Haddon, Dr. William, Jr., Part 3, October 6, 8, 9, 14 and 16, 1969, p. 1109-1138; Part 4, March 17, 18 and 19, 1970, p. 1628-1643.  
Lynch, Gerald, Jr., chairman of the board and president, and Haines, Arthur C., vice president and general manager, Menasco Manufacturing Co., Part 3, October 6, 8, 9, 14 and 16, 1969, p. 1138-1150.
2. Florida General Laws 1970, Chapter 420.
3. "Pure Pontiac!", Pontiac Motor Division, General Motors Corporation.
4. Automotive News, January 11, 1971.
5. Buick 1971 model press conference, September 23, 1970, transcript, p. 14.
6. Motor Trend, September 1970, p. 69.
7. 1971 Plymouth Satellite, "Road Runner GTX," p. 2.
8. Place, R. A., executive engineer, car body system engineering, Ford Motor Company, at the Federal Highway Administration's Exterior Protection (Bumpers) Meeting, April 2, 1970, p. 99-128.
9. "Status of General Motors Bumper Program," a paper circulated by General Motors Corporation.
10. Haddon, Dr. William, Jr., hearing before the Committee on Commerce, U.S. Senate, April 25, 1968, p. 38-79, 98-636.
11. Miller, Dr. Patrick M., head, structural dynamics section, transportation research department, Cornell Aeronautical Laboratory, Inc., Buffalo, N.Y., Proceedings, 25th annual meeting, National Association of Independent Insurers, Miami Beach, Fla., November 15-19, 1970, p. 93-98.

## APPENDIX A

INSURANCE INSTITUTE FOR HIGHWAY SAFETY  
CRASH TEST RESULTS

1969

S E D A N S		5 MPH FRONT	5 MPH REAR	10 MPH FRONT	10 MPH * FRONT/REAR	10 MPH * FRONT/SIDE	10 MPH FRONT/POLE	15 MPH FRONT
	Chevrolet Impala	\$187.15	\$195.80	\$665.80	\$510.25	\$639.85	N O T T E S T E D	\$1179.50
	Ford Galaxie	\$174.30	\$173.70	\$485.00	\$485.45	\$702.80		\$854.18
	Plymouth Fury I	\$134.35	\$134.40	\$644.15	\$449.00	\$710.80		\$1049.25
	Ambassador SST	\$305.15	\$352.55	\$814.90	\$595.85	\$641.20		\$823.27

\*In the intervehicular crash tests front-to-rear and front-to-side, the figures are the cost estimates for both cars combined.

**INSURANCE INSTITUTE FOR HIGHWAY SAFETY  
CRASH TEST RESULTS**

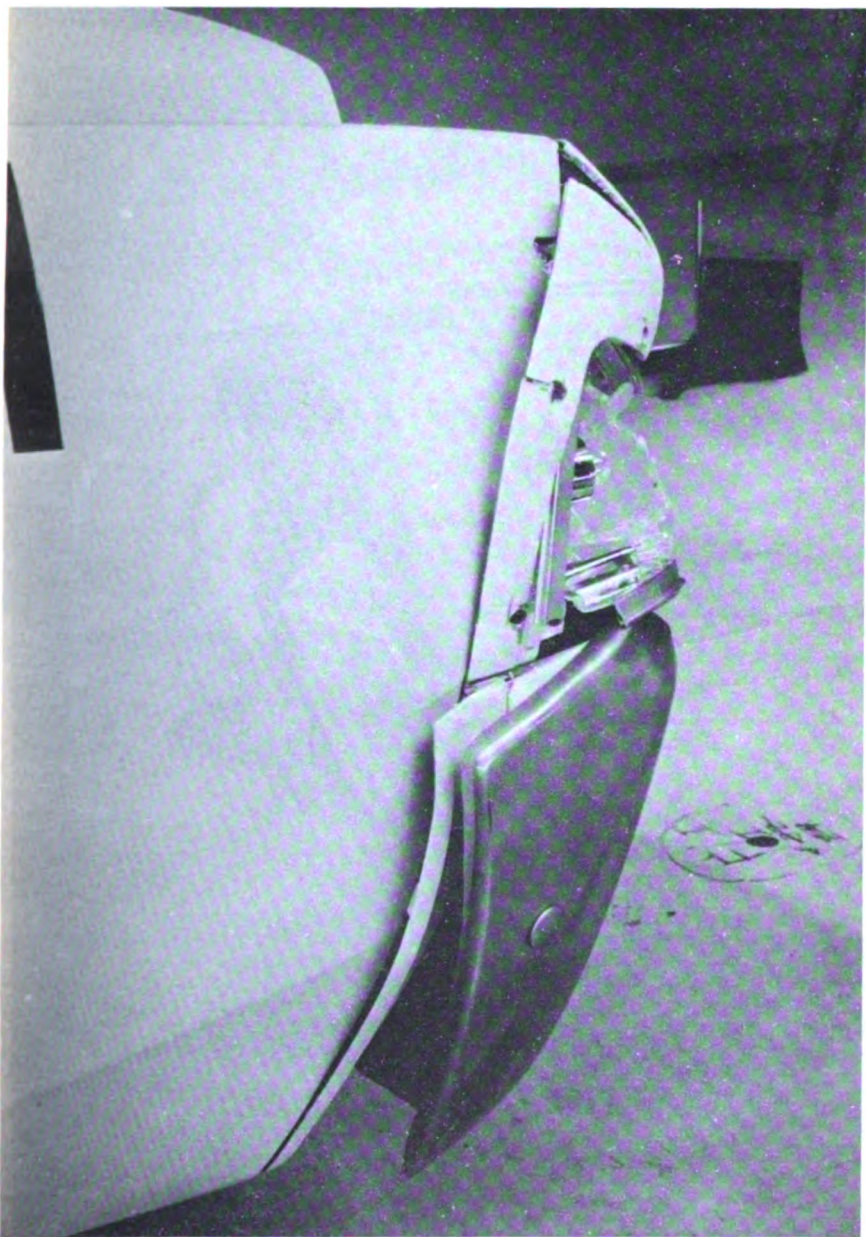
**1970**

		5 MPH FRONT	5 MPH REAR	10 MPH FRONT	10 MPH * FRONT/REAR	10 MPH * FRONT/SIDE	10 MPH FRONT/POLE	15 MPH FRONT
SEDANS	Chevrolet Impala	\$196.20	\$247.30	\$491.40	\$421.30	\$481.80	NOT TESTED	\$740.40
	Ford Galaxie	\$185.80	\$325.25	\$459.05	\$513.45	\$478.35		\$703.10
	Plymouth Fury	\$171.30	\$202.05	\$600.05	\$483.60	\$515.75		\$652.30
	AMC Ambassador	\$309.25	\$100.05	\$615.75	\$813.80	\$521.55		\$819.50
PONY CARS	Ford Mustang	\$160.30	\$147.05	\$400.70	\$615.65	\$402.35	NOT TESTED	\$661.35
	Plymouth Barracuda	\$176.60	\$197.10	\$332.90	\$379.75	\$409.70		\$876.05
	AMC Javelin	\$262.67	\$132.40	\$618.85	\$550.59	\$502.05		\$686.65
	Chevrolet Camaro	\$130.10	\$174.00	\$599.35	\$465.60	\$437.90		\$1,052.60
SMALL CARS	Volkswagen	\$120.25	\$ 64.45	\$322.35	\$228.20	\$381.55	\$335.75	\$518.70
	Toyota	\$133.70	\$ 69.30	\$410.94	\$305.57	\$316.34	\$370.03	\$486.86
	Maverick	\$153.10	\$204.75	\$427.35	\$449.80	\$423.30	\$400.55	\$590.55
	Hornet	\$204.50	\$193.85	\$508.40	\$590.20	\$591.75	\$474.60	\$636.75

**\*In the intervehicular crash tests front-to rear and front-to-side, the figures are the cost estimates for both cars combined.**



**FIGURE 1.—Detail of front end damage, 1971 American Motors Ambassador, after a five mile per hour impact front-to-barrier.**



**FIGURE 2.**—Detail of front end damage, 1971 American Motors Ambassador, after a ten mile per hour impact with another 1971 American Motors Ambassador front-to-side.



FIGURE 3.—Detail of front end damage, 1971 American Motors Gremlin, after a ten mile per hour impact with another 1971 American Motors Gremlin front-to-side.

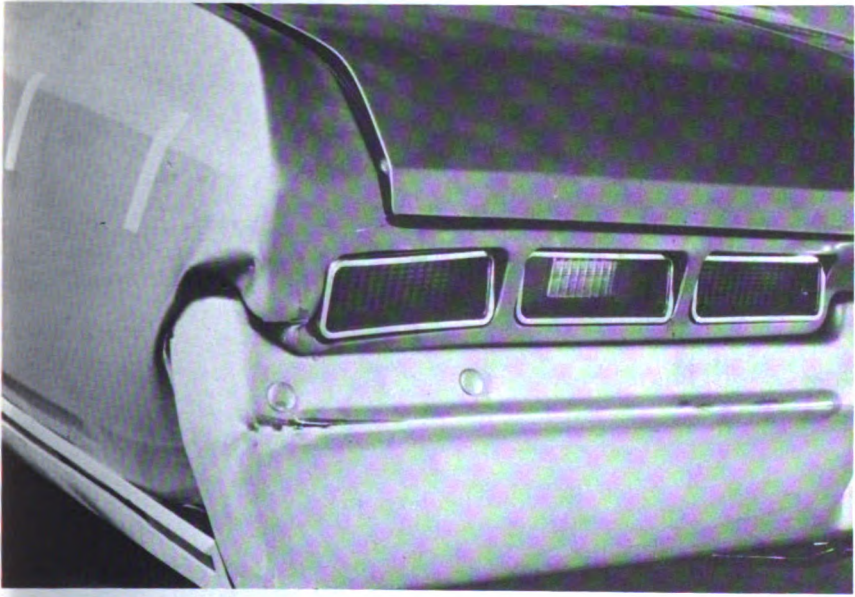


FIGURE 4.—Detail of left rear damage, 1971 Chevrolet Impala, after a five mile per hour impact rear-to-barrier.



**FIGURE 5.**—Detail of how rear bumper mangled too-close sheet metal on a 1971 Chevrolet Vega in a five mile per hour impact rear-to-barrier.

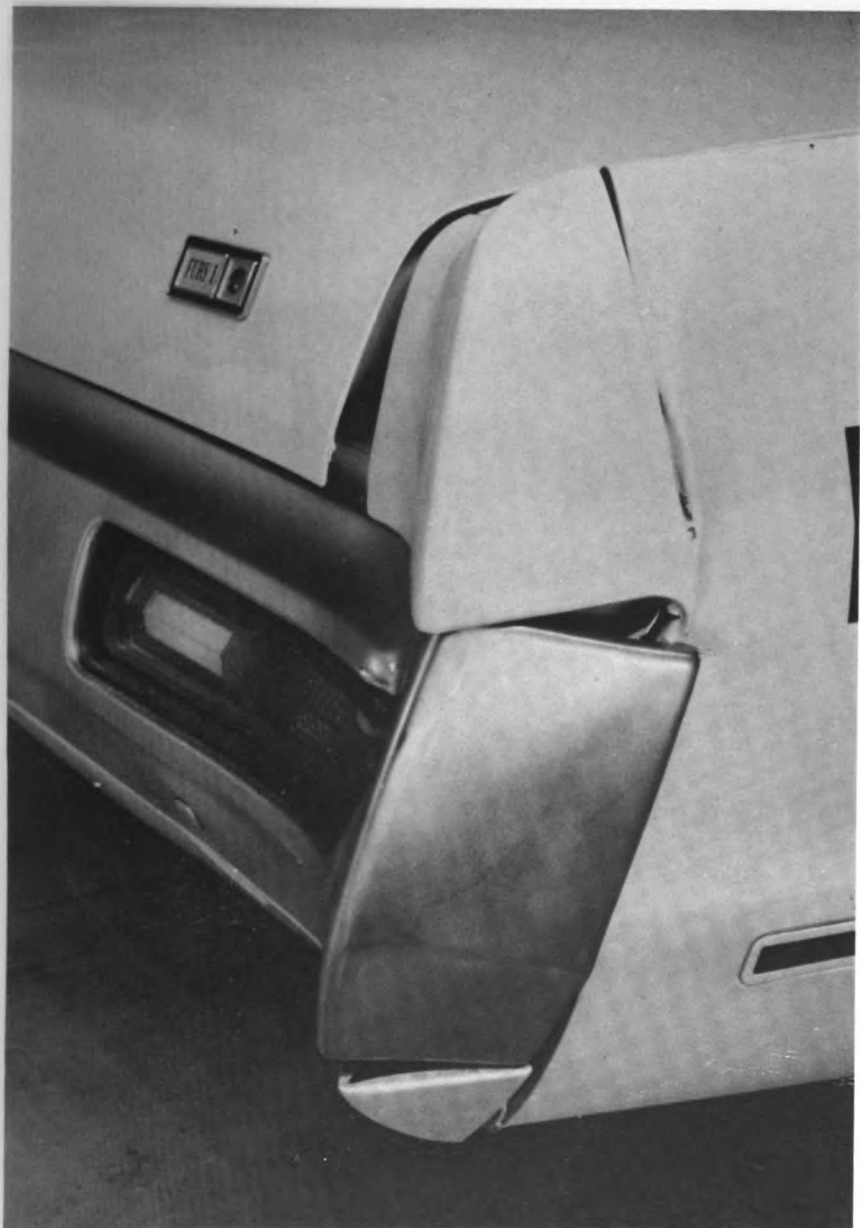
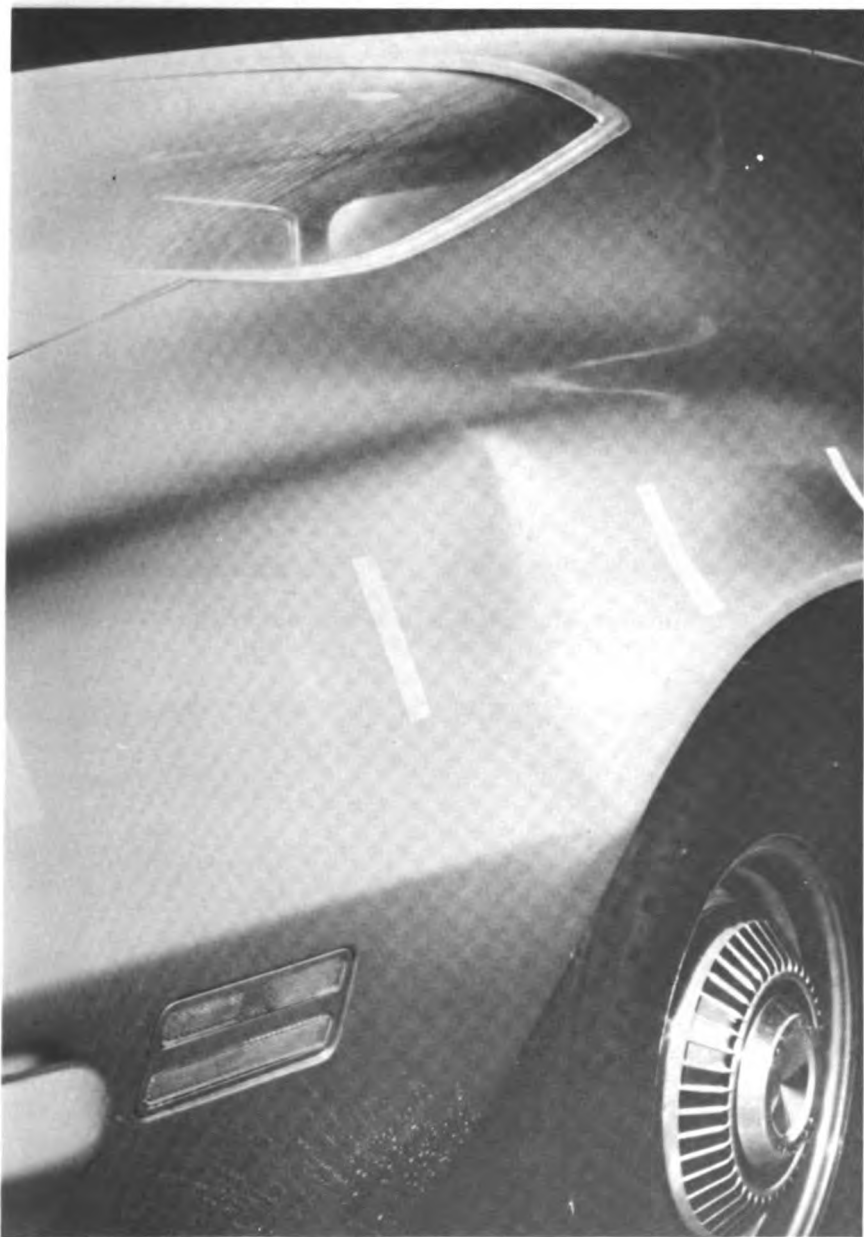


FIGURE 6. — Detail of rear end damage, 1971 Plymouth Fury, after a ten mile per hour impact from another 1971 Plymouth Fury front-to-rear.



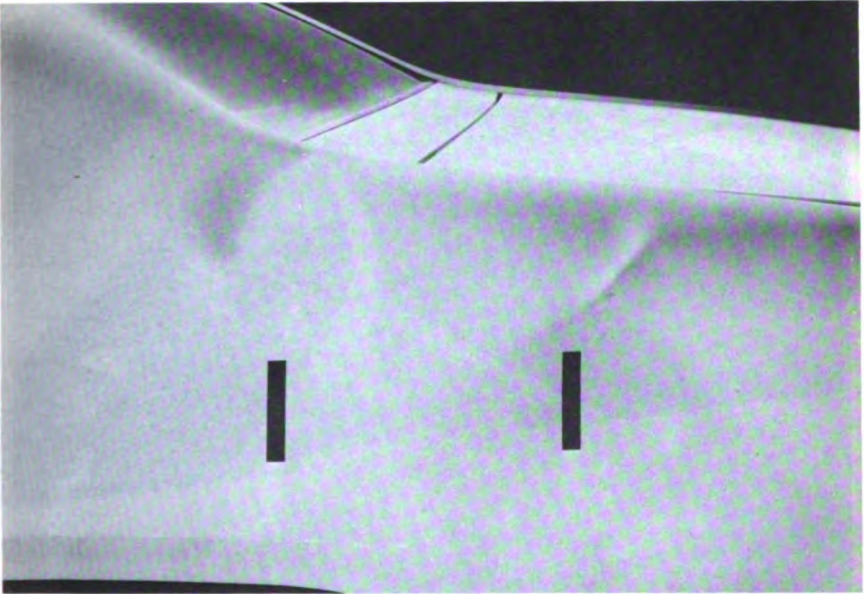
FIGURE 7.—Detail of rear end damage, 1971 Buick Skylark, after a five mile per hour impact rear-to-barrier.



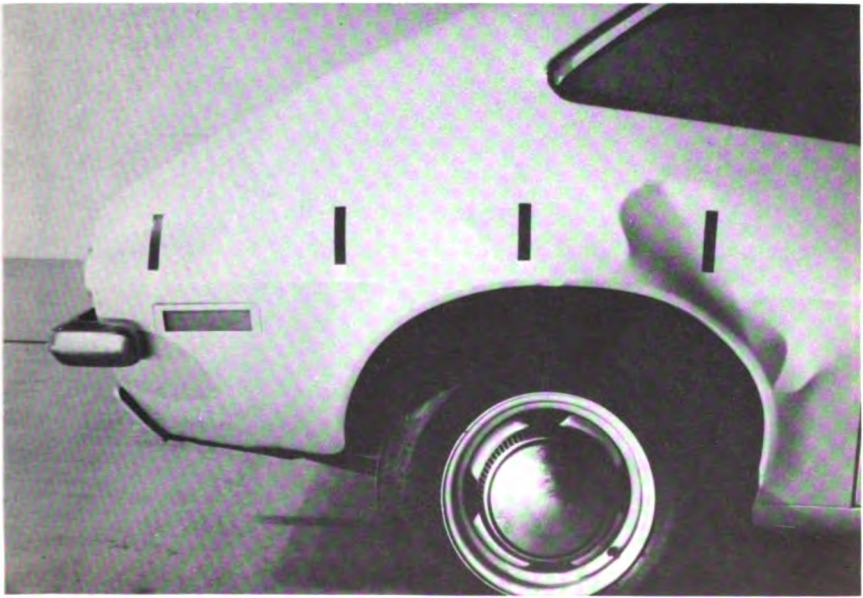
**FIGURE 8.—Right rear quarter panel damage, 1971 Pontiac Firebird, after a five mile per hour impact rear-to-barrier.**



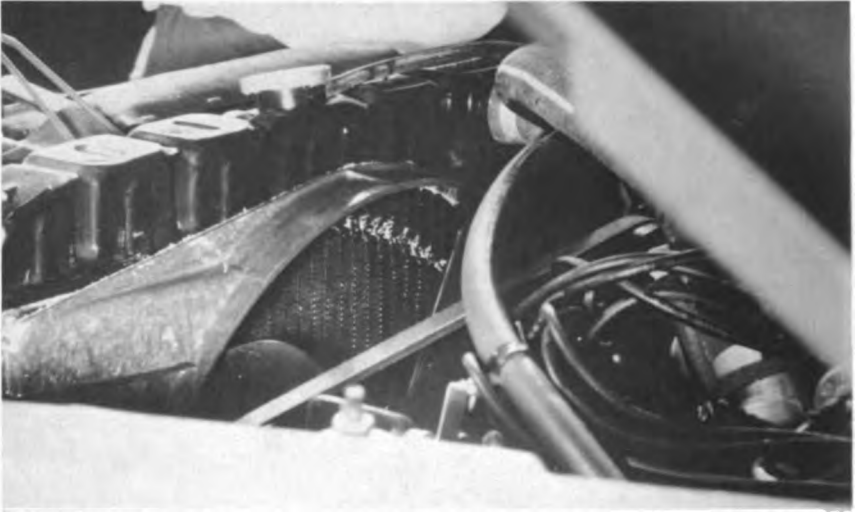
FIGURE 9.—Left rear quarter panel damage, 1971 Pontiac Firebird, after a five mile per hour impact rear-to-barrier.



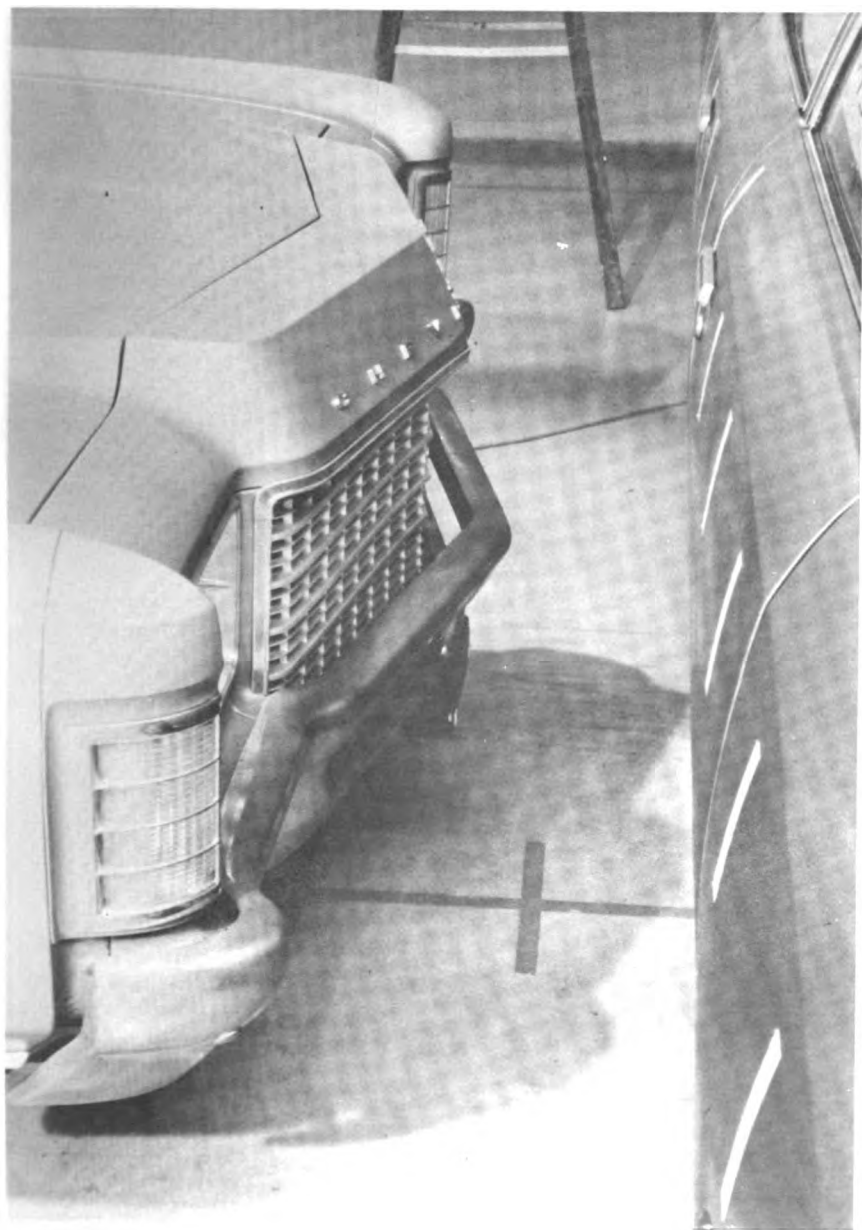
**FIGURE 10.**— Left rear quarter panel damage, 1971 Plymouth Satellite, after a five mile per hour impact rear-to-barrier.



**FIGURE 11.**— Right rear quarter panel damage, 1971 Ford Pinto, after ten mile per hour impact from another 1971 Ford Pinto front-to-rear.



**FIGURE 12.—Detail of radiator damage by fan blades in five mile per hour front-to-barrier impact by 1971 American Motors Ambassador.**



**FIGURE 13.**— Pointed front end contour of 1971 Chevrolet Impala.



FIGURE 14.—Pointed front end contour of 1971 Ford Galaxie.



**FIGURE 15.**—Pointed “battering ram” front contour of 1971 Chevrolet Vega.

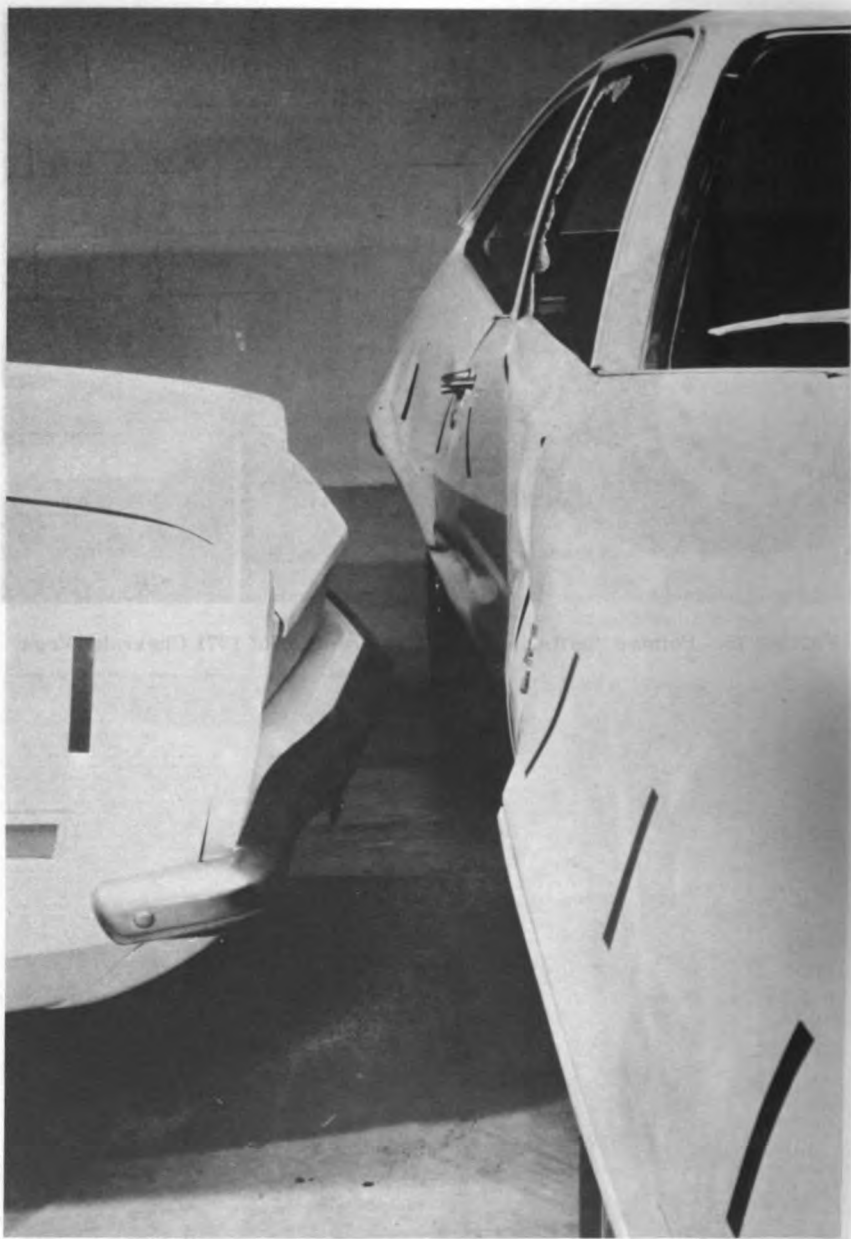
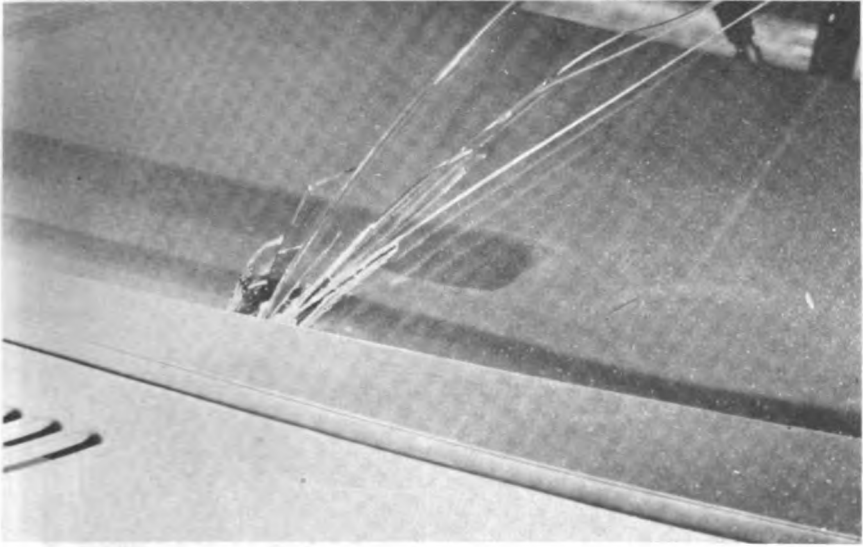


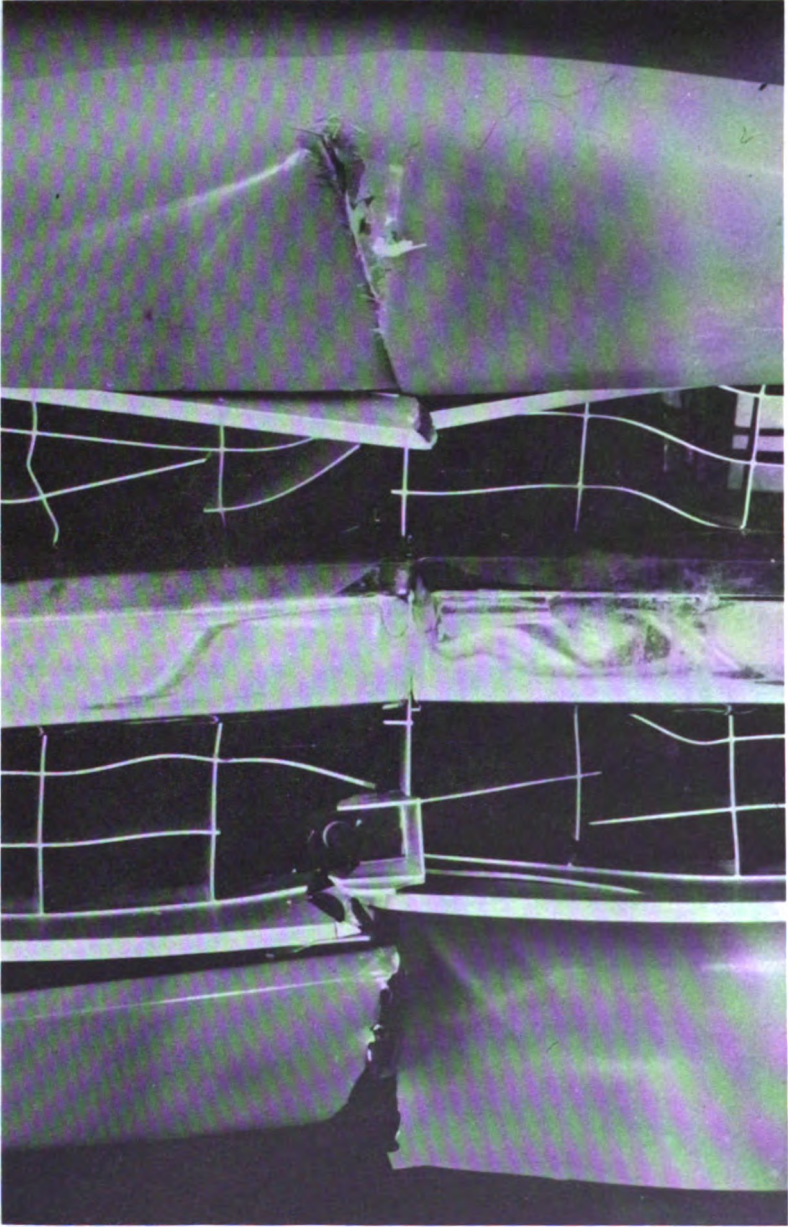
FIGURE 16.—Pointed front end contour of 1971 Ford Pinto.



**FIGURE 17.**—Impala—green #48: Detail of windshield damage on 1971 Chevrolet Impala after 10 miles per hour front-into-barrier test crash.



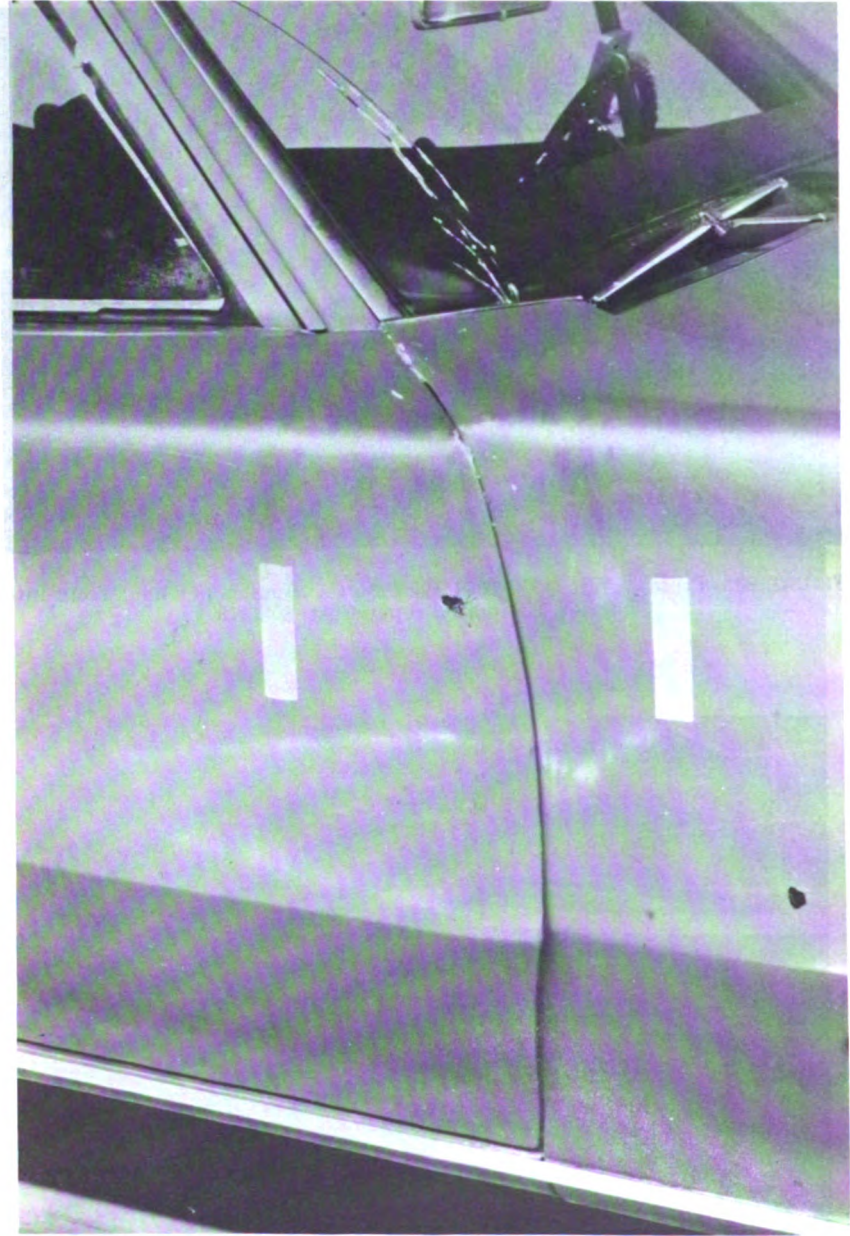
**FIGURE 18.**—Galaxie—green #57: 1971 Ford Galaxie, 10 miles per hour front-into-barrier. Estimated repair cost: \$781.50.



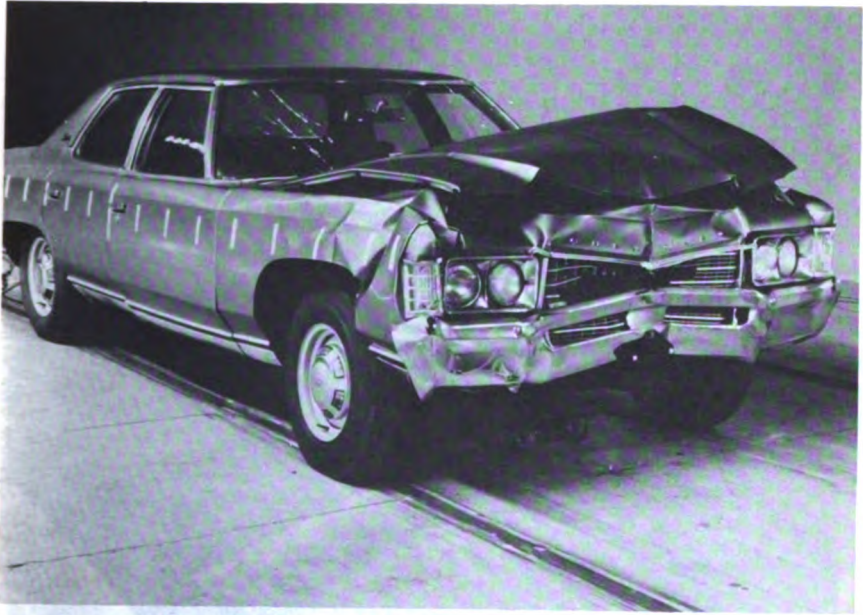
**FIGURE 19.**—Vega—turquoise #48: Close-up of front end damage on 1971 Chevrolet Vega, including crushed radiator grille and torn underpan, after 10 mile per hour front-into-barrier test crash.



**FIGURE 20.**—Pinto—white #38: 1971 Ford Pinto, 10 miles per hour front-into-barrier. Estimated repair cost: \$535.79.



**FIGURE 21.— Buick—red #48: Side view of windshield damage on 1971 Buick Skylark after 10 mile per hour front-into-barrier test crash. Total estimated repair cost \$880.80.**



**FIGURE 22.**—Impala—blue #44: 1971 Chevrolet Impala 15 miles per hour front-into-barrier. Estimated repair cost: \$1,170.50.



**FIGURE 23.**—Impala—blue #48: Close-up of windshield damage on 1971 Chevrolet Impala after 15 miles per hour front-into-barrier crash test.



**FIGURE 24.**—Galaxie—blue #52: Close-up of windshield and side damage on 1971 Ford Galaxie after 15 miles per hour front-into-barrier crash test. Total estimated repair cost: \$1,207.45.



FIGURE 25. — Fury—gold #40: 1971 Plymouth Fury 15 miles per hour front-into-barrier. Estimated repair cost: \$870.65.



FIGURE 26. Ambassador—green #47: 1971 American Motors Ambassador, 15 miles per hour front-into-barrier. Estimated repair cost: \$1,206.98.

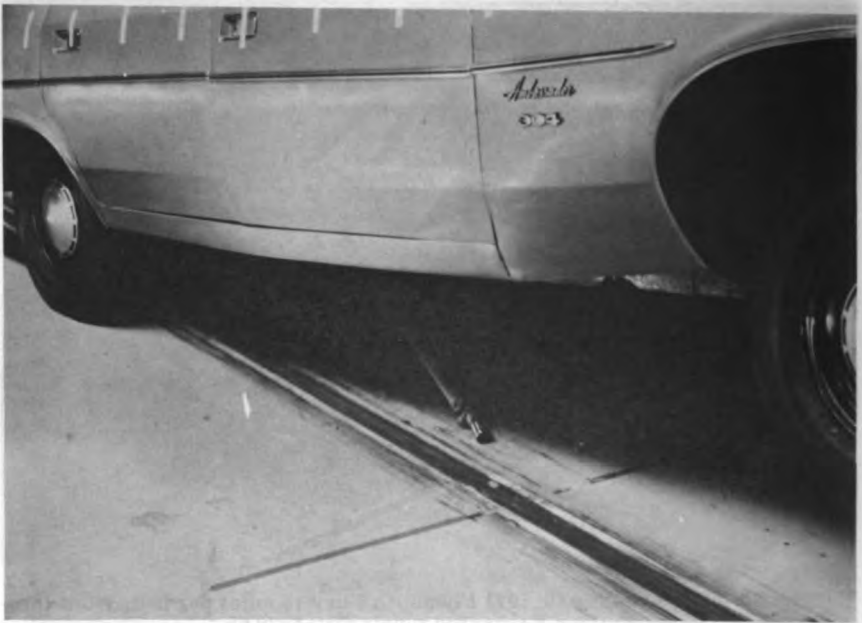
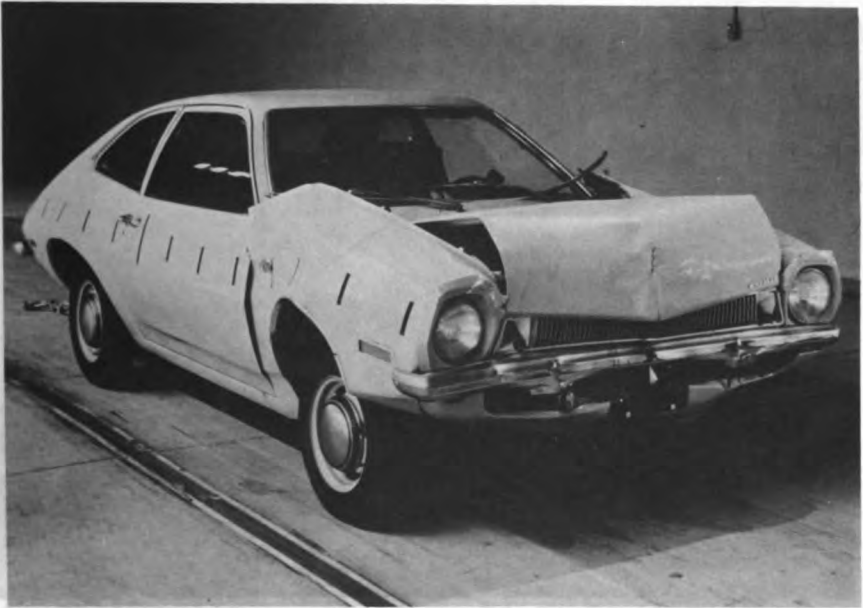


FIGURE 27. Ambassador—green #61: Dropped drive shaft on 1971 American Motors Ambassador after 15 miles per hour front-into-barrier crash test.



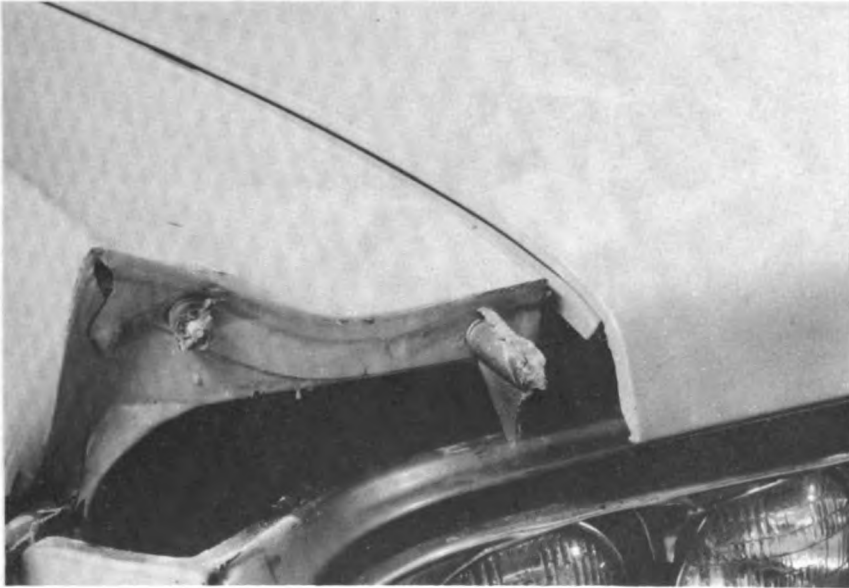
FIGURE 28.—Volkswagen—beige #41: 1971 Volkswagen Super Beetle 15 miles per hour front-into-barrier. Estimated repair cost: \$615.20.



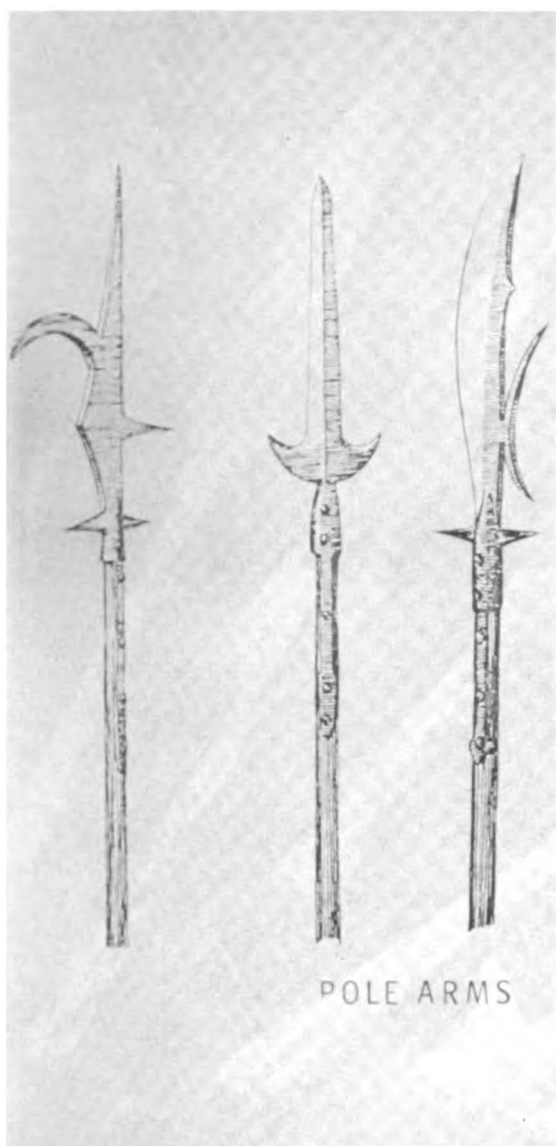
**FIGURE 29.**—Pinto—green #46: 1971 Ford Pinto 15 miles per hour front-into-barrier. Estimated repair cost: \$816.34.



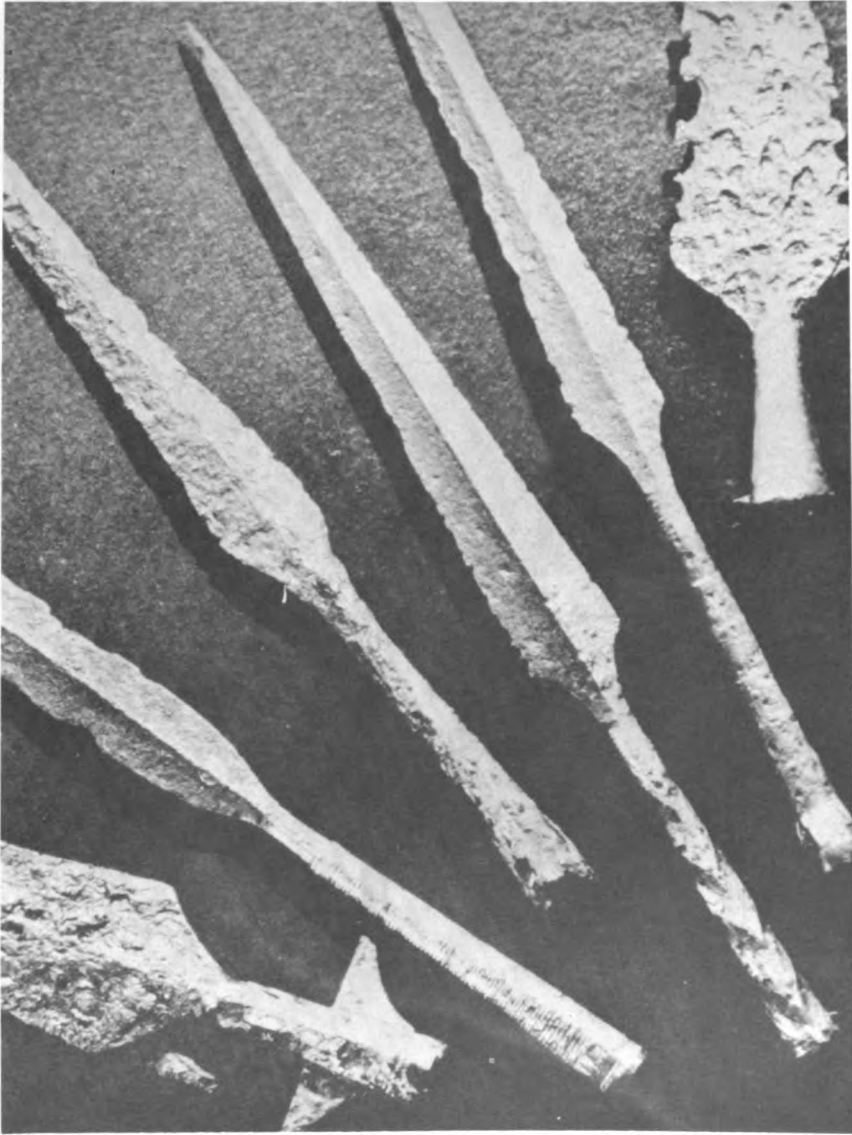
**FIGURE 30.**—Impala—green #42: 1971 Chevrolet Impala, 10 miles per hour front-into-barrier. Estimated repair cost: \$828.50.



**FIGURE 31.**—Detail of right front fender extension fastener on 1971 Plymouth Fury after ten mile per hour front-to-side impact with another 1971 Plymouth Fury.



**FIGURE 32.**—Medieval pole arms.



**FIGURE 33.—** Ancient Scandinavian spearheads.

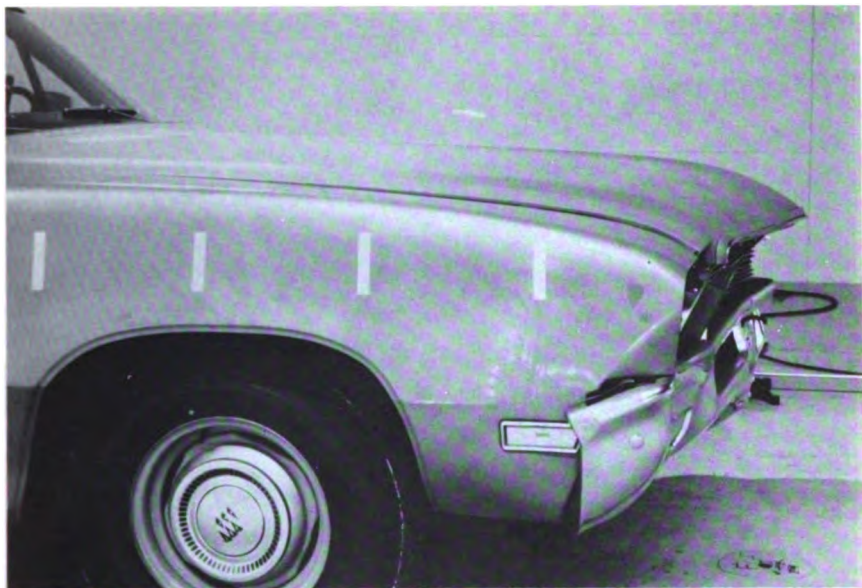
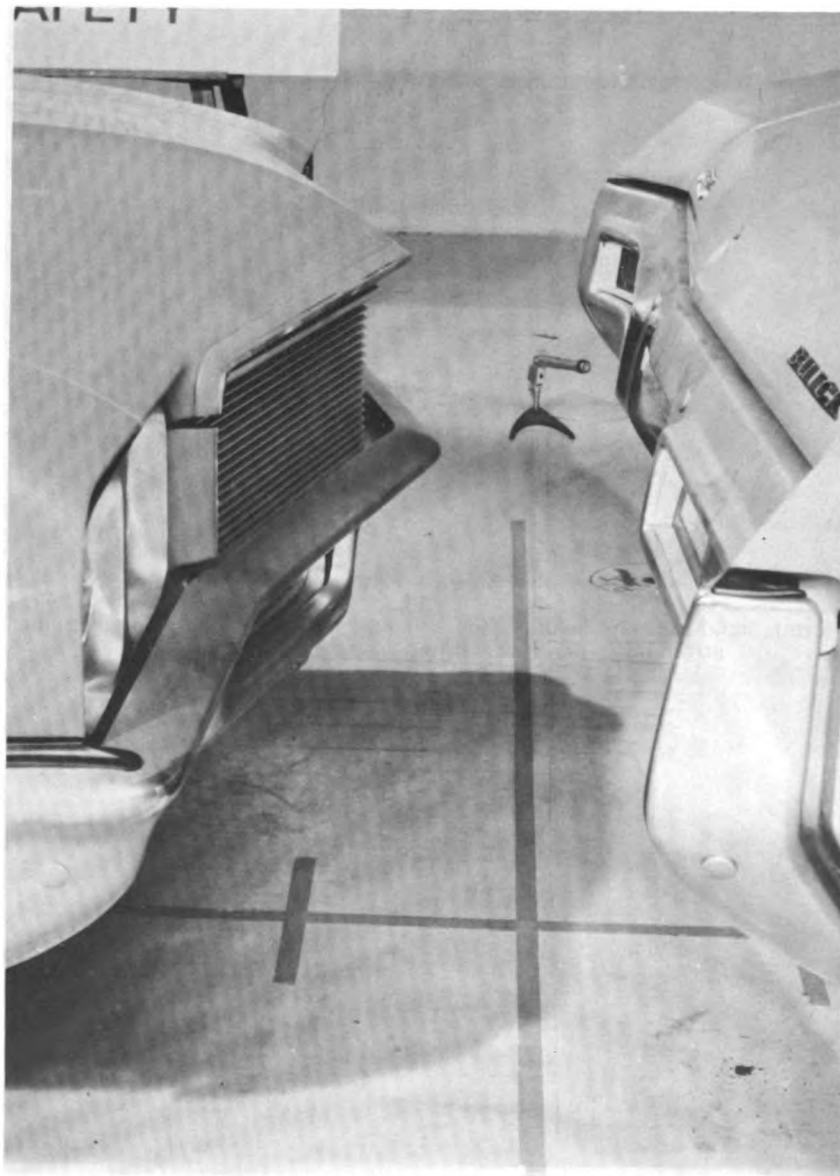


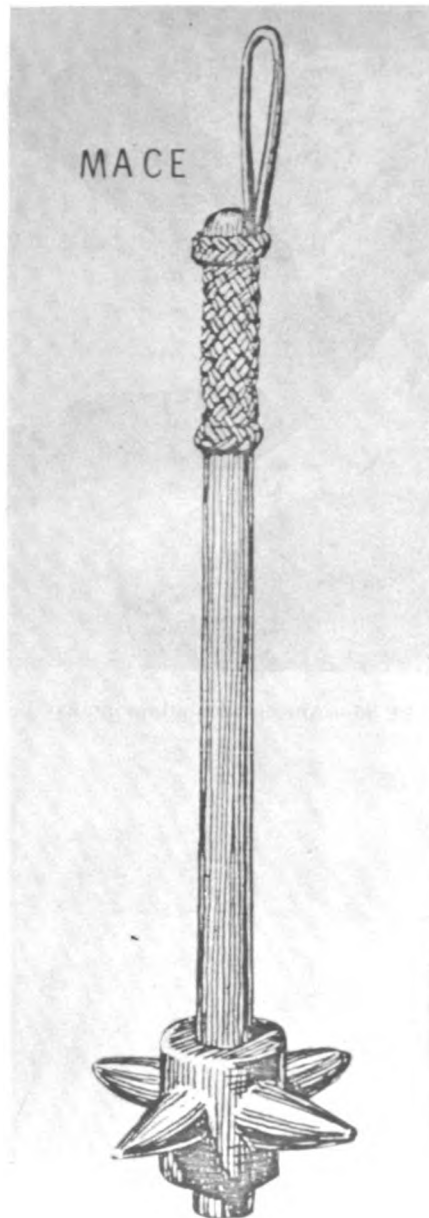
FIGURE 34.—Front end beak of 1971 Buick Skylark after front-to-rear impact at ten miles per hour with another 1971 Buick Skylark.



**FIGURE 35.**— Front end “beak” of 1971 Buick Skylark.



**FIGURE 36. – Ancient Scandinavian axe heads.**



**FIGURE 37.**— Points on mace served functions similar to those of cars in impacts.



**FIGURE 38.**— Pointed front end of 1971 Ford Galaxie. Also vertical “axe-head” fender extensions.



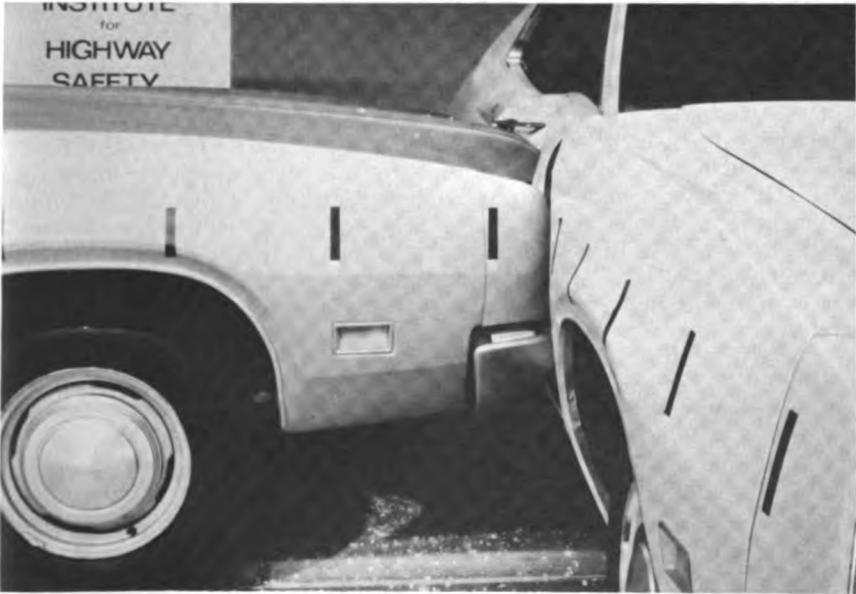
**FIGURE 39.—1971 Chevrolet Vega before impact with another 1971 Chevrolet Vega at ten miles per hour front-to-rear.**



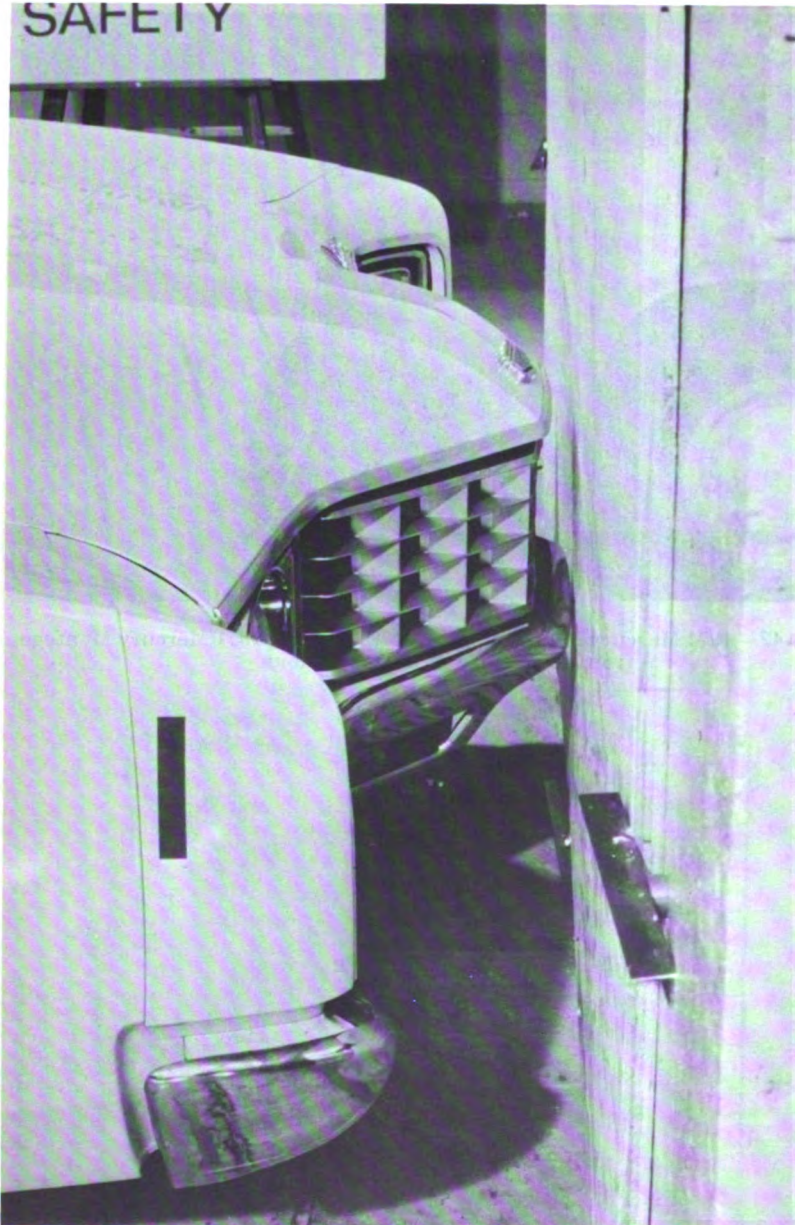
FIGURE 40. — Ancient battering ram head.



**FIGURE 41.**—“Battering ram” contour of 1971 Chevrolet Vega front end.



**FIGURE 42.— 1971 Mercury Montego impact with another 1971 Mercury Montego front-to-side at ten miles per hour.**



**FIGURE 43.**—Detail of wedge-like and battering ram front contour of 1971 Mercury Montego.



FIGURE 44. — Pontiac Firebird — tan #55: Close-up of windshield damage on 1971 Pontiac Firebird after 15 miles per hour front-into-barrier crash test.

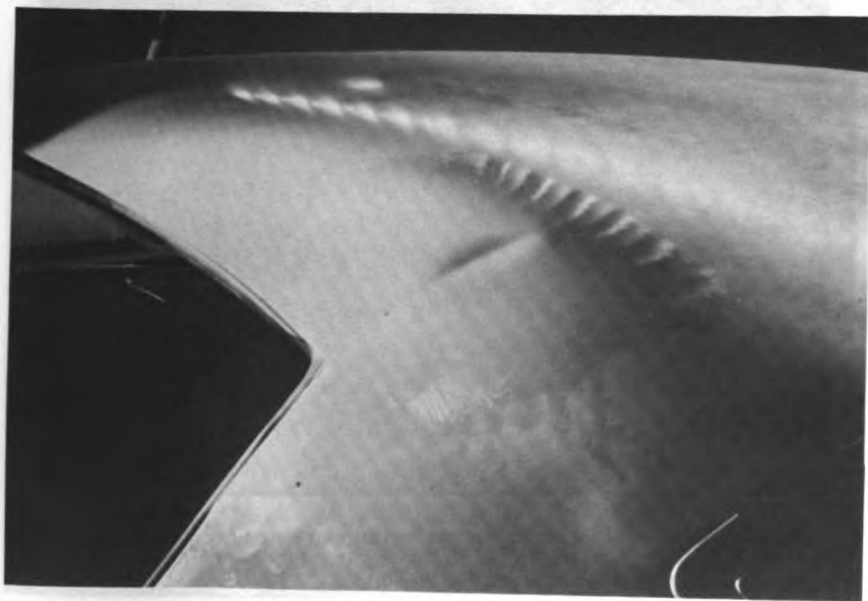


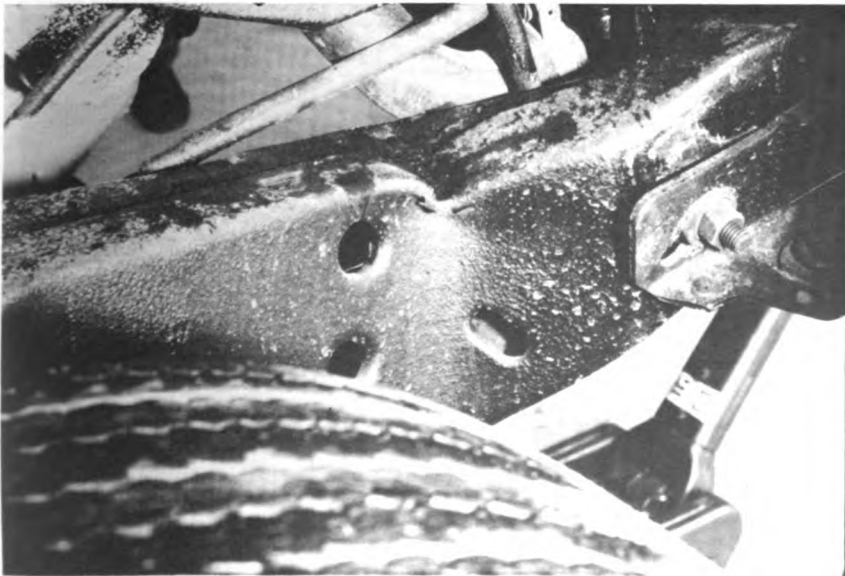
FIGURE 45. — Pontiac Firebird — tan #66: Close-up of rear roof damage on 1971 Pontiac Firebird after 15 miles per hour front-into-barrier crash test.



**FIGURE 46.**— Buick—gold #50: Transmission support member which came loose on the 1971 Buick Skylark in its 15 miles per hour front-into-barrier crash test. Total estimated repair cost: \$1,025.80.



**FIGURE 47.**— Pontiac Firebird—tan #51: 1971 Pontiac Firebird 15 miles per hour front-into-barrier. Estimated repair cost: \$1,142.45.



**FIGURE 48.**— Buick—gold #55: Close-up of buckled frame on 1971 Buick Skylark in its 15 miles per hour front-into-barrier crash test.



**FIGURE 49.**— Montego—white #39: Mashed in front end snout of 1971 Mercury Montego after its 15 miles per hour front-into-barrier crash test. Total estimated repair cost: \$821.90.



**FIGURE 50.**—Impala—green #56: Close-up view of rear bumper nestled into crumpled sheet metal of 1971 Chevrolet Impala after its 2.5 miles per hour rear-into-barrier crash test. This car met requirements of the U.S. Department of Transportation's standard for rear bumpers on 1973 model cars, and yet suffered \$64 in property damage in this crash test.

(The following information was subsequently received for the record:)

MAY 27, 1971.

Dr. WILLIAM HADDON, Jr.  
President, Insurance Institute for Highway Safety,  
The Watergate, Washington, D.C.

DEAR DR. HADDON: As a follow-up to your testimony before the Senate Commerce Committee on May 12, 1971, could you please provide the Committee with the following:

(1) an itemized parts and labor list for each car which you crashed during the 1971 crash test series and

(2) any data you have on the effect of crash repair parts increases on the overall crash repair cost increase between 1970 and 1971.

In addition, while I realize the Insurance Institute for Highway Safety did not test cars to determine their compliance with the Department of Transportation's 5 mile per hour front-end barrier test, could you provide the Committee with any information you have as to whether vehicles, if any, might meet the 5 mile per hour front barrier test being proposed by the Department of Transportation.

Thanking you in advance for your consideration of this request, I am

Sincerely yours,

WARREN G. MAGNUSON,  
Chairman.

INSURANCE INSTITUTE FOR HIGHWAY SAFETY,  
Washington, D.C. June 7, 1971.

Hon. WARREN MAGNUSON,  
Chairman, Committee on Commerce, U.S. Senate,  
Old Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: The following are responses to follow-up questions contained in your letter of May 27.

1. The itemized list of parts and labor for each car which was test crashed during our 1971 crash test series is being sent under separate cover.

2. A portion of the increase in estimated repair costs for the 1971 model sedans over the similar 1970 model sedans test crashed a year ago can be attributed to increased parts costs. For instance, among the four popular model sedans—the Chevrolet Impala, Ford Galaxie, Plymouth Fury and American Motors Ambassador—the price of the 1971 model's bumper face bars, front and rear, increased from 4 to 13 per cent over the price of the similar part on 1970 models. I might point out that the low of 4 per cent was for the rear bumper of the Ambassador and that the high of 13 per cent was for the Impala front bumper face bar. In all other cases but these, the increase in price for the bumper face bars ranged between 5 and 10 per cent. One other case is also noteworthy: the American Motors Ambassador's 1971 model features what are called "bumper guards," protruding chrome noses on the front bumper which are faced with rubber; while the replacement bumper itself is priced at \$62.95 as opposed to the 1970 replacement bumper's price of \$59.25—a 6.25 per cent increase—this does not include the bumper guards, which are priced at \$24.80. Following is a chart showing the 1970-71 model price difference of front and rear bumpers for sedans.

1970-71 DIFFERENCE IN SEDAN REPLACEMENT BUMPER PRICES

	1970	1971	Dollar difference	Percent difference
Chevrolet Impala:				
Front.....	\$61.75 <sup>1</sup>	\$69.95	\$8.20	13
Rear.....	47.50	52.25	4.75	10
Ford Galaxie:				
Front.....	64.95	69.45	4.50	7
Rear.....	59.20	63.30	4.10	6.95
Plymouth Fury:				
Front.....	58.25	61.15	2.90	5
Rear.....	65.00	71.95	6.95	10.5
American Ambassador:				
Front.....	59.25	62.95 <sup>2</sup>	3.70	6.25
Rear.....	61.35	63.80	2.45	4

<sup>1</sup> On 1970 models, the Chevrolet Impala front bumper was in 2 sections, priced \$46.25 and \$15.50, for a total \$61.75.

<sup>2</sup> On 1971 models, the front bumper is also equipped with bumper guards, priced at \$24.80 per bumper. This brings the total front bumper price to \$87.75, or 48.7 percent above the 1970 front bumper price of \$59.25.

We have also made an attempt to adjust the 1970 model sedan estimated repair costs upward to reflect inflation in crash replacement parts, to determine how much of the increase in the total estimated repair cost for 1971 models is attributable solely to the increased delicateness in the front and rear end designs of the 1971 models. We adjusted the 1970 model replacement parts costs upward by 4.5 per cent, the rate of inflation in the wholesale price index from the start of the 1970 model year (September 1969) to the start of the 1971 model year (September 1970). The following are charts showing these comparisons:

	1970 models			1971 models			Percent increase		
	Parts <sup>1</sup>	Labor <sup>2</sup>	Total	Parts	Labor	Total	Parts	Labor	Total
<b>5 m.p.h. front barrier:</b>									
Impala.....	95.30	120.00	215.30	196.70	171.20	367.90	106.4	42.7	70.9
Galaxie.....	96.14	107.20	203.34	154.00	187.20	341.20	60.2	74.6	67.8
Fury.....	112.44	72.80	185.24	98.25	104.00	202.25	-12.6	42.8	9.2
Ambassador.....	209.78	124.00	333.78	307.40	108.00	415.40	46.5	-12.9	24.5
Average.....	128.42	106.00	234.42	189.09	142.60	331.69	47.2	34.5	41.5
<b>5 m.p.h. rear barrier:</b>									
Impala.....	65.31	211.20	276.51	131.80	315.20	447.00	101.8	49.2	61.7
Galaxie.....	153.35	204.00	357.35	68.15	250.40	318.55	-55.6	22.7	-10.9
Fury.....	94.83	127.20	222.03	100.75	165.60	266.35	6.2	30.2	20.0
Ambassador.....	67.24	40.80	108.04	110.00	175.20	285.20	63.6	329.4	164.0
Average.....	95.18	145.80	240.98	102.68	226.60	329.98	7.9	55.4	36.6
<b>10 m.p.h.—front/rear:</b>									
Impala <sup>3</sup> .....	141.89	92.00	233.89	196.50	84.00	280.50	38.5	-8.7	19.9
	93.60	132.00	225.60	81.85	139.20	221.05	-12.5	5.5	-2.0
Galaxie <sup>3</sup> .....	145.66	115.20	260.86	148.95	99.20	248.15	2.3	-13.9	-4.9
	142.89	156.00	298.89	180.80	288.80	469.60	26.5	85.1	57.1
Fury <sup>3</sup> .....	144.04	102.40	246.44	139.45	62.40	201.85	-3.2	-39.1	-18.1
	109.75	172.80	282.55	102.80	144.00	246.80	-6.3	-16.7	-12.6
Ambassador <sup>3</sup> .....	279.29	204.80	484.09	180.30	76.00	256.30	-35.4	-62.9	-47.0
	221.57	177.60	399.17	71.75	69.60	141.35	-67.6	-60.8	-64.6
Average <sup>3</sup> .....	177.72	128.60	306.32	166.30	80.40	246.70	-6.4	-37.5	-19.5
	141.95	159.60	301.55	109.30	160.40	269.70	-23.0	.5	-10.6
<b>10 m.p.h. front barrier:</b>									
Impala.....	313.81	218.40	532.21	625.30	203.20	828.50	99.3	-7.0	55.7
Galaxie.....	317.31	177.60	494.91	545.50	236.00	781.50	71.9	32.9	57.9
Fury.....	479.29	161.60	640.89	479.10	154.40	633.50	-.04	4.5	-1.2
Ambassador.....	472.29	187.20	659.49	440.85	258.40	699.25	-6.7	38.0	6.0
Average.....	395.68	186.20	581.88	522.69	213.00	735.69	32.1	14.4	26.4
<b>10 m.p.h. front/side:</b>									
Impala <sup>4</sup> .....	120.02	72.8	192.82	187.25	141.60	328.85	56.0	94.5	70.5
	123.05	212.0	335.05	215.30	160.00	375.30	75.0	-24.5	12.0
Galaxie <sup>4</sup> .....	102.10	78.4	180.50	105.00	136.00	241.00	2.8	73.5	33.5
	120.54	224.8	345.34	292.15	147.20	439.35	142.4	-34.5	27.2
Fury <sup>4</sup> .....	123.10	75.2	198.30	101.50	145.60	247.10	-17.5	93.6	24.6
	143.01	223.2	366.21	98.55	208.00	306.55	-31.1	-6.8	-16.3
Ambassador <sup>4</sup> .....	185.25	97.6	282.85	151.65	81.60	233.25	-18.1	-16.4	-17.5
	92.48	185.6	278.08	99.65	280.00	379.65	7.8	50.9	36.5
Average <sup>4</sup> .....	132.62	81.0	213.62	136.35	126.20	262.55	2.8	55.8	22.9
	119.77	211.40	331.17	176.41	198.80	375.21	47.3	-6.0	13.3
<b>15 m.p.h. front barrier:</b>									
Impala.....	591.57	199.20	790.77	868.10	302.40	1,170.50	46.7	51.8	48.0
Galaxie.....	567.96	182.40	750.36	814.65	392.80	1,207.45	43.4	115.4	60.9
Fury.....	533.89	161.60	695.49	571.45	299.20	870.65	7.0	85.1	25.2
Ambassador.....	636.20	240.80	877.00	831.78	375.20	1,206.98	30.7	55.8	37.6
Average.....	582.41	196.00	778.41	771.50	342.40	1,113.90	32.5	74.7	43.1

<sup>1</sup> Parts inflated by 4.5 percent, Bureau of Labor Statistics (inflation of wholesale price index from September 1969 to September 1970).

<sup>2</sup> Labor, \$8 per hour.

<sup>3</sup> In the front-to-rear crashes, the price listed 1st for each car model is the estimated repair cost for the striking car (front-end damage); listed 2d is the estimated repair cost for the struck car (rear-end damage).

<sup>4</sup> In the front-to-side crashes, the price listed 1st for each model is the estimated repair cost for the striking car (front-end damage); listed 2d is the estimated repair cost for the struck car (side damage).

As can readily be seen, the four sedan models tested each year averaged a 41.5 per cent increase in their 5 mile per hour front-into-barrier crash tests in 1971, even after the 1970 test results were adjusted for both labor and parts inflation. Similarly:

For the 5 mile per hour rear-into-barrier crashes, a 36.6 per cent average increase in 1971;

In the 10 mile per hour front-into-barrier tests, a 26.4 per cent average increase;

In the 15 mile per hour front-into-barrier tests, a 43.1 per cent average increase.

These increase levels, we believe, are the results of increased delicateness designed and built into the four sedan models we tested.

The 1973 standard for front ends requires that a limited number of certain items of equipment be functional after five miles-per-hour, front-end, barrier impacts. These include the hood latch, cooling system, fuel system, and lights. Since in our tests (prior to the issuance of the Department of Transportation standard) of 1969-71 model cars using the same kind of five miles-per-hour front-end, barrier crashes as the 1973 standard requires, we were documenting property damage and not specifically and directly post-crash inability of such items to function, we cannot give an answer with respect to the front ends based on examinations of such functional ability. Nonetheless we can exclude some cars as being unable to meet the standard since retrospective examination of our crash photography and parts-damaged lists indicated such experience as broken headlights, leaking radiators, and damaged hood latches.

In the case of other cars front-ended at five miles-per-hour, there is no evidence from inspection of our photography and of the lists of parts damaged that the items specified by the front-end, 1973 standard were damaged. (I note, incidentally, that an additional complexity stems from the fact that as long as the headlights, even if knocked out of position, can be adjusted back to their originally allowable alignment, they still pass the DOT standard. Needless to say, we had also not checked for such alignment. This permissiveness, by the way, is another deficiency of the standard as issued.)

In the context of the foregoing, any conclusions on the basis of our tests as to the extent to which cars now on the road would pass the front-end 1973 standard must be a matter of carefully considered judgment, not certainty, and it is for this reason that we concentrated in my testimony on the rear end, where headlight alignment problems and most of the others cited above present no problem.

Nevertheless, our best judgment is that substantial percentages of 1971's would in fact pass the 1973 *front-end* standard and that the percentage of 1971's in this category may be approximately one-third of make-model varieties we tested.

The additional question arises as to whether there are individual kinds of cars that now pass the 1973 standard at *both* ends.

Some cars that pass the standard at one end (either) do not at the other. This appears to substantially reduce the one-third figure given above. However, others almost certainly pass at both ends and this most probably includes prominent varieties of 1971 automobiles.

The following four 1971 automobiles appear to have met the 1973 DOT bumper requirement after a five miles-per-hour front-barrier crash. They did not sustain damage to the hood latches, radiators, fuel systems, or lights, although headlight alignment was not checked.

Make-model :	Damage
Ford Pinto.....	\$164. 20
Chevrolet Vega.....	181. 30
AMC Gremlin.....	121. 30
Mercedes 220.....	194. 50

The remainder of the nine 1971 automobiles sustained damage to radiators or hood latches, and in one instance sustained damage in such a way that although the latch operated satisfactorily, the hood could not be fully opened.

It is interesting to note that both the Pinto and Mercedes 220 also passed the 1973 requirement for a 2½ miles-per-hour rear-barrier crash.

If we can be of further help, kindly let me know.

Sincerely,

WILLIAM HADDON, Jr., M.D.,  
President.

## AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MARCH 18, 1971

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10 a.m., in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the committee) presiding.

Present: Senators Magnuson, Hartke, Hart, Moss, Cotton, Baker, Cook, and Stevens.

### OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

There will be some other Senators on their way. The committee feels this is a very important meeting.

The Chair has a short opening statement.

Today the Senate Commerce Committee will receive the final report and recommendations of Secretary Volpe<sup>1</sup> based upon a comprehensive 2-year study of the automobile compensation system which we commissioned. It is my hope that the report and recommendations will complement the efforts of this committee and the Congress to achieve meaningful reform in automobile insurance practices and procedures.

I need not elaborate on the automobile insurance problems facing every family in this country. I have often said the two most important things to any American family are health insurance and automobile insurance.

I need not restate my own personal commitment to achieving meaningful changes in our present system—changes that will erase the symptoms of unavailability, arbitrary cancellation, and spiraling costs by curing the sickness which produces these symptoms.

Speculation concerning the administration's position on this important matter has been great. I have seen every conceivable position reported. I do not know where the information came from but the papers always say it is "an informed source."

Senator Hart and I—and I do not speak for the other members of the committee—have made our position quite clear because we have been in this matter for a long time and we have come to the conclusion that a national no-fault approach is needed and we think it is needed now. We are going to hear what the Secretary has to say about that.

<sup>1</sup> See p. 145.

Now, Mr. Secretary, before we do that, before we begin the questioning and hear from you, I think I could speak for every member of the committee when I express our appreciation for the way you and your staff have conducted this auto compensation study. You, Assistant Secretary Baker, Mr. Richard Walsh and Mr. Lee Huff are to be complimented. It has been a long, complex, most difficult task. I hope that you know that we are deeply appreciative of the way you have joined with us in trying to work out something.

Now, before you begin, as I understand, there are copies of the final report available. You can see the interest in this. Will there be copies available for people through the Department?

Secretary VOLPE. Yes, sir.

The CHAIRMAN. They are already printed?

Secretary VOLPE. Yes, sir.

The CHAIRMAN. Thank you.

**STATEMENT OF HON. JOHN A. VOLPE, SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY RICHARD WALSH, DEPUTY DIRECTOR FOR POLICY AND PLANS DEVELOPMENT; CHARLES D. BAKER, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS; AND LEE W. HUFF, DIRECTOR FOR POLICY AND PLANS DEVELOPMENT**

Secretary VOLPE. Mr. Chairman and members of the committee: May I first present my colleagues? Charles Baker, my Assistant Secretary for Policy and International Affairs. To his right Lee Huff, Director of Plans for the Insurance Study. And to my left Dick Walsh who was Director of Operations for this very important study.

I am certainly very happy to be here today to discuss the final report of the Automobile Insurance and Compensation study called for by Public Law 90-313.

Last fall when I appeared before this committee I noted that the research findings of the study were largely contained in a series of published reports which now number 23. Our policy findings and recommendations are included in the report we are releasing today. This report summarizes the principal factual and judgmental findings of the study, analyzes the basic alternatives to the present system, and makes a tentative judgment as to what should be done by way of change in the future and how that change should be accomplished.

I see no point in dwelling here on the problems and disabilities of the present system. I described our own views generally last October before this committee and they are detailed in the various reports of the study. Moreover, there appears to be a very broad and heartening consensus among nearly everyone concerned—the industry, many elements of the bar, consumer spokesmen, insurance regulators, and legislators and executives at all levels of government—that the present system is not working well and should be changed.

Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket there is plainly much less of a consensus; the complexity of the subject and its problems make possible

an almost limitless number of combinations, permutations, and variations of recovery rules, insurance coverages, et cetera. Our report, without trying to be exhaustive, discusses the broad range of the principal alternatives and some of the advantages and disadvantages of each. I am certain that these hearings will do much to draw out the merits of the various approaches.

What I would like to address myself to this morning are the recommendations contained in this report. A number of rather important considerations or judgments have influenced the framing of these recommendations.

First, it seems clear, at least to us, that there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go in changing the reparations system. It is also clear that there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We, ourselves, don't claim to have definitive answers to these questions either. As a result, it seems to us that we should seek change through State action but consistent with the broad outlines or principles of a system such as that described below. We need not and do not insist that a single reform system be imposed upon all the States. The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system.

Nonetheless, because motor vehicle travel is so much an interstate activity, States should eventually attempt to develop similar reparations systems. While we find great intrinsic merit in the State system of insurance regulation and in ultimate State control of decisions regarding their own reparations systems, some kind of broad national goals or standards, which are advisory, would seem to be very useful and appropriate.

Further, change in the auto accident reparations system at the State level has clearly moved off dead center and would appear to be achieving some momentum. I could not have made that statement a year ago. I think that this constructive move should be strongly encouraged, perhaps guided and helped, *but not* preempted by Federal action.

With those remarks, let me turn to the recommendations themselves.

#### SUMMARY OF THE RECOMMENDATIONS

We believe that the States should *begin promptly* to shift to a first party, non-fault compensation system for automobile accident victims.

We believe that this can be done in such a way that we can reverse ourselves, if the actual performance of the system doesn't meet our expectations.

We believe that recovery for general or intangible damages should be drastically limited and carefully circumscribed.

We believe that our relevant institutions, public and private, and the citizens who man them, should be given adequate time to plan for, adapt to and assess the performance of a new system.

We believe that the change should take place at the State level but

that there should be general national goals or principles toward which the States will be moving.

It is proposed that all medical and rehabilitation costs be made recoverable from the victims' own auto insurers on a first-party non-fault basis. Coincident with this change could be a restriction on the recovery of general damages to cases involving death, permanent impairment or disfigurement, or total medical costs exceeding a rather high threshold. Victims could continue to recover other personal injury economic losses and property damage losses under the existing system. Later, the rest of personal injury-related economic loss compensation could be shifted to a first-party, non-fault basis.

Finally, there is the question of a shift of some or all of the property damage loss compensation now being made under third-party fault rules to a first-party, non-fault basis. Whether, when and to what extent this should take place should depend upon the public's reaction to no-fault accident compensation for personal injury, the development of a reasonably sound system for rating the relative damageability and repairability of motor vehicles, and the achievement of broad understanding of the inherent "fairness" of using loss exposure as a major factor in pricing insurance to the individual. The more serious and immediate problems and the greater opportunity for cost savings seem to be in the personal injury field.

We agree on the direction we should be heading and that meaningful change should not be delayed. While hopefully many States should be taking the direction on their own accord, we would propose at the same time that the Council of State Governments through its appropriate instrumentalities, give added impetus to such steps.

It is possible that further consideration of the matter by the Congress, the States and the industry may dictate that the implementation process should be broken down into several stages. We are not doctrinaire on this point, only on the general direction in which we should be heading and on the point that meaningful change should not be unnecessarily delayed.

We hope that there would be a minimum of argument over whether full implementation would or would not result in cost savings to the public. We simply cannot predict the absolute long-range financial impacts of such a fundamental change with any reasonable precision, nor should we allow ourselves to be unduly distracted by those who wish to argue the question one way or the other. As various first-party no-fault plans are implemented in different States answers will be forthcoming to the question of whether some variant of the program we suggest works better than the present system or not. In this manner, States may be able to spare themselves most of the uncertainty, and greatly reduce the financial risk that would be involved in any single step, all the way, perhaps irreversible change of the system. A first step, for example, might be designed to give confidence that the added costs of insuring full medical coverage to all victims will be offset by the "savings" achieved by revising the rules on general damages. Thus, reform as proposed might allow systems to absorb changes in digestible and reasonably predictable amounts and allow them to reverse gears or slow down, or perhaps even speed up, as experience indicates.

Let me describe more specifically the broad outlines of a possible ultimate system which we believe is consistent with the findings and conclusions of our study and the principles we endorse. The policy limits and deductibles I will use should be recognized for what they are—illustrative. (Our study findings do indicate that they are in appropriate orders of magnitude.)

#### AN ILLUSTRATIVE SYSTEM

We believe that the present system needs change badly, and needs it now. Based on our extensive study, we believe that the most promising avenue for changes which will better serve the driving public is in the direction of a first-party no-fault system, combined with modification of the rule on general damages. More specifically, we think that a system like the one described below shows the most promise. But a little observation is worth a great deal of speculation. Only last January 1 did Massachusetts, my home State, become the first State to take a step toward the system we recommend.

By the way, anybody who thinks that can happen overnight in any State just has not looked at the facts because it was over five and a half years ago that the gentleman testifying before you today started trying to change the law in Massachusetts, and it was the middle of last year, approximately, when my State was finally able to get it changed.

Other States may follow, and they should. Only out of States' experience with variants of the kind of plan we recommend will we be able to learn with assurance which first-party, no-fault plan is best. If the new plan fulfills our expectations, it should become as dominant in the States as third-party fault plans are today.

#### COMPULSORY FIRST-PARTY BENEFITS

Every owner of a motor vehicle would be required to carry insurance protecting himself, his family, and every uninsured passenger or pedestrian suffering injury as a result of an accident involving the insured vehicle for all economic losses they thereby incur, subject to reasonable limits and deductibles. In addition, the insurance should protect the insured and all members of his family who are part of the same household against losses suffered when they are pedestrians, or passengers in another vehicle.

#### REQUIRED MEDICAL BENEFITS

Full coverage for all medical benefits should be provided with a relatively small permissible deductible per accident but with very high mandatory limits. Any deductible or limit voluntarily assumed by the car owner on behalf of himself and his household would not apply, however, to the medical losses of uninsured pedestrians. Included in covered benefits will be all medical rehabilitation expenses within the limits provided. Coverage should be primary as among private systems—that is, payment of benefits by a carrier under this coverage should automatically remove the obligation of any other insurance

carrier to pay benefits to the extent that the costs are covered by automobile insurance. However, there should be the greatest freedom open to the insured in selecting his choice of coverage.

#### INCOME LOSS PROTECTION

Coverage would have to be afforded for a relatively high percentage of earned income of the injured or deceased auto accident victim. There should be a short permitted waiting period at the option of the insured for the start of benefits, and a permitted monthly benefit ceiling by the insurer of perhaps \$1,000. Voluntarily assumed deductibles or limits would not apply to uninsured pedestrians. Higher benefits could be made available at the option of the insurer and insured.

This coverage might pay wage continuation benefits any time an injured person is prevented from working, either as a result of his disability or as a result of his participation in an approved rehabilitation program. The benefit program should provide for modification as provided contractually between the insurer and insured because of changed circumstances, for example, the remarriage of a surviving spouse, surviving children reaching their majority, et cetera.

The minimum duration of mandatory income loss protection should, and probably could, be finally established only after some further investigation and experimentation. Initially, minimum duration might be set at 3 years, except for victims in approved rehabilitation programs whose protection would continue as long as necessary. Longer durations should be optionally available from the beginning and should also be considered for inclusion in the mandatory coverage as experience dictates. A lump sum burial benefit of perhaps \$1,000 per person could be provided, with any higher benefits being optional on the part of both the insurer and the insured.

#### LOST SERVICE BENEFITS

Coverage for the cost of necessary replacement services for non-employed persons (for example, housewives) could be required up to a benefit of perhaps \$75 per week, although I think my wife is worth more than that, with a permitted waiting period for benefits at the option of the insured. Minimum duration of mandatory protection might be the same as for income loss.

#### PROPERTY DAMAGE

Coverage of damages to property, including the insured vehicle, might be required, but with a permissible deductible referable to the vehicle only at the option of the insured of up to a rather high level, perhaps \$1,000 or a third of the value of the car, and with a permissible limitation of coverage by the insurer of \$10,000 per accident. There would be no deductible with respect to the nonvehicular property of others damaged in an accident.

#### ELIMINATION OF ACTION FOR DAMAGES

No recovery for any loss covered by the applicable required coverage would be permitted in any private action for damages. The insured victim's sole recourse for benefits for wage loss, medical loss, lost serv-

ices, funeral expenses (and property damage) should be limited to the insured's required coverage and any additional optional coverages that he has elected to purchase, whether under an auto insurance policy or other voluntary loss reparation program.

The existing right to sue for damages resulting from negligence in car crashes might be drastically curtailed, perhaps remaining only for intangible losses subject to a limitation: No person should recover for intangible losses unless he established that he suffered permanent impairment or loss of function or permanent disfigurement, or that he incurred personal medical expenses (excluding hospital expenses) as a result of the accident in excess of a rather high-dollar threshold. The dollar threshold initially chosen should not be considered inviolable but should be reviewed as to its appropriateness as regular, specified intervals.

Drivers could, of course, continue to insure against this residual third-party liability.

#### WHERE DO WE GO FROM HERE?

The Department's study is now completed; you have our final report and our best judgment as of this point in time as to the kind of a reparations system which is most promising for the future. As I said, we think the present system needs change badly and needs it now.

What we would hope to see now is for the Congress, after listening to the views of the other interested parties, to enact a concurrent resolution setting forth the principles of a reparations system toward which the State should strive. These principles or goals would give guidance, direction, and impetus to the States' own reform efforts. We have gone as far as we can without observance of actual experience. Now is the time for the States to act, and we will help them. We have completed our study; now let us implement it.

Both the Congress and the executive branch should measure the States' progress toward these goals over a reasonable period of time. The Department of Transportation should maintain a program of continuing surveillance of the matter, and provide direct cooperation and assistance to the State. Two years from now, when we have had time to analyze the experience of the several States under new systems, there should be a reexamination of the whole question of auto accident compensation reform and whether or not some further action is desirable.

We have prepared a draft concurrent resolution along these lines, and today I have formally submitted this proposed resolution to the President of the Senate and Speaker of the House for the consideration of the Congress. If such resolution is passed, we would look for the 50 States (and four other districts) to undertake introduction of systems along the general lines we suggest. We will assist both the States and instrumentalities of the States in this effort. In addition to ensuring that the ultimate development of the system is brought about by those who we believe can do it best, the States themselves, this ensures the opportunity for full nationwide participation in such development.

Mr. Chairman, when I was last before you on this subject, I observed that the problem of motor-vehicle compensation is far more complex and far less easily resolved than many appear to believe. This, ob-

viously, has not changed in the last 6 months. But complexity, difficulty, or whatever, should no longer stand in the way of action. This administration and I want to cooperate with and support those who also want to get on with the process of reform.

Mr. Chairman, this completes my prepared testimony. We will be happy to answer any questions you or the other members may have.

I have here the proposed concurrent resolution, which I can read if you desire. Each of you have a copy and you may prefer that it be added to the record. I will be guided by your preference, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Secretary.

We will put the concurrent resolution in the record here in full and it will probably be referred to this committee when we meet tomorrow. So we will have that before us and also the bills that have been introduced, mainly the main bill which has been before this committee for some time, and there are some other bills. So we will have before us the opportunity to look at all of these proposals and that is what the committee intends to do.

(The concurrent resolution follows:)

#### CONCURRENT RESOLUTION

Whereas the existing system for compensating motor accident victims results in the unavailability of any benefits to many persons sustaining loss arising out of motor vehicle accidents, including many seriously injured persons and the dependents of many persons killed in such accidents; and

Whereas the existing system's uneven allocation of compensation benefits results in the excessive compensation of many persons sustaining only minor loss, and whereas by contrast many persons with severe and permanently crippling injuries recover only a fraction of their losses in compensation benefits from the system; and

Whereas administration of the system consumes an inordinate amount of resources which might be put to better use in compensating accident victims; and

Whereas the system's benefits tend to be ill-timed and unresponsive to victims' needs both because of long delays in payment and because benefits are predominantly in the form of lump sum payments, and whereas effective rehabilitation of the accident victim tends to be a practical impossibility under the system; and

Whereas the system is supported by, and dependent upon, compulsory insurance or financial responsibility laws which exert varying degrees of compulsion upon motorists to purchase liability insurance without invariably assuring motorists of the availability of automobile insurance; and

Whereas the counterproductive regulatory pressures placed by the system on insurers has led to the development of socially undesirable competition in risk selection accompanied by arbitrary and capricious declinations of insurance, cancellations and refusals of renewal with the consequent growth of a high-risk automobile insurance market serviced in some cases by insurers of questionable financial stability; and

Whereas the system has imposed intolerable burdens on State officials responsible for regulating the rating, underwriting and claims practices of insurers and responding to consumer complaints relating thereto; and

Whereas the system has placed an unreasonable workload on the Federal and State courts which have been forced to devote a disproportionate part of their time and resources to motor vehicle accident civil litigation; and

Whereas the system has resulted in the denial of substantial and equal justice to seriously injured accident victims who are unable to withstand the financial burdens consequent upon long court delays and who are, therefore, forced into inadequate settlements of their claims; and

Whereas the existing liability insurance system renders it impossible rationally to allocate insurance premium costs so as to reflect the ability of a motor vehicle to protect its occupants from serious injury in the event of a crash or to reflect differing costs of repairing motor vehicles; and

Whereas, however, prompted by the Automobile Insurance and Accident Insurance Study mandated by Congress, the Hearings of Congressional committees and the various hearings and studies conducted by many State legislatures, it is now almost universally conceded that there is an imperative need for prompt and far-reaching reform; and

Whereas one State, the Commonwealth of Massachusetts, has taken the lead by enacting the first partial no-fault plan in the country and many of the State legislatures are even now considering far-reaching reforms suited to the needs of their constituencies; and

Whereas the principal problems and abuses with respect to automobile insurance clearly stem from defects in the system for compensating accident victims and from the compulsions upon motorists to obtain the insurance which sustains and upholds that system rather than from defects in the insurance institution or in its regulation by the several States; and

Whereas assumption of the present comprehensive State regulatory authority over automobile insurance by the Federal Government would be fraught with great and grave consequences giving rise to issues and problems of great magnitude, and is highly undesirable; and

Whereas mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform; and

Whereas one State, Massachusetts, has taken an important step toward the principles endorsed herein, and others promise to do so soon so that variants of the plan we endorse will, in the laboratory of the several States, soon be proved and perfected by experience, Now therefore be it

*Resolved*, That it is the sense of the Congress that the regulation of insurance should, in general, continue with the States, subject to the admonition, however, that Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation.

That it is the further sense of the Congress that there must evolve at the State level a rational, equitable and compatible reparation system for motor vehicle accident victims supported and sustained by a similarly rational, equitable and compatible private insurance system, such combined system to be built upon the following principles:

1. Basic benefits should be forthcoming to the injured person on a first-party, contractual basis to the end that such person would be receiving benefits from the insurer with whom he has contracted and to whom he has paid his premiums and to the further end that competition among insurers would take the form of competition to provide prompter and more effective compensation for the premium payer.

2. Basic benefits under the reparations system should be payable to all accident victims without regard to fault, excluding, of course, those who willfully injure themselves.

3. Such benefits should provide compensation for all economic loss, subject to reasonable deductibles and limits, and the tort lawsuit should be eliminated, at least *pro tanto*, avoiding the adversary process for the mass of accidents.

4. The function of the reparations system should be to afford adequate, but not excessive, compensation to the accident victim at minimum cost. Therefore, the benefits obtainable by the accident victim from other benefit sources should be coordinated and meshed with those obtainable from the automobile accident reparations system with a view toward internalizing automobile accident loss costs by making automobile insurance the primary benefit source whenever feasible.

5. Maximum choice should be afforded the motorist in selecting his insurance source provided the coverage complies with the principles for the required minimum mandatory coverage.

6. Rehabilitation, avocational as well as vocational, should be a primary function and objective of the compensation system.

That it is the further sense of the Congress that the Secretary of Transportation be authorized and directed to request that the Council of State Governments, using the appropriate instrumentalities, develop model legislation for submission to the States for their consideration. The Secretary is further authorized and directed to analyze the actions of the States, their legislatures and insurance regulatory officials to determine to what extent such States act hereafter to bring about motor vehicle insurance and accident compensation systems consistent with the intent of this resolution; to provide technical assistance to and interact with such States, their legislatures and insurance regulatory officials in effecting in all the States compensation systems consistent with such

principles, and to report such progress as has been made, or is being made, in effecting such compensation systems, with a final report to be made by the Secretary not later than 25 months hereafter detailing the action taken by each State in moving toward or providing an automobile accident compensation system consistent with these principles; the experience of the States with these systems; and, concluding with the Secretary's views regarding the feasibility of attaining a satisfactory and compatible motor vehicle accident reparations system without further Federal legislation.

The CHAIRMAN. Now, I know that members of the committee have many questions to ask because this is a complex subject and will require, I am sure, some study on behalf of the committee members themselves.

They may have some different ideas about some of the things that are suggested. But I just want to ask this one question: On the basis of your statement, would it be fair to say that as far as the administration is concerned, the fault versus the no-fault issue has now been resolved?

Secretary VOLPE. Yes, sir.

The CHAIRMAN. And it is called for too in the major bill before this committee?

Secretary VOLPE. Yes, sir.

The CHAIRMAN. Leaving aside the issue of time and how it is accomplished, do you think we should go to a no-fault auto insurance system to cover most losses that occur as a result of automobile accidents? I think you answered that yourself in your statement.

Secretary VOLPE. Yes.

The CHAIRMAN. But this is an important point to focus on. I suppose you will answer yes to this question, reaching this conclusion, you and your advisers and those who conducted the study took into account the traditional arguments against no fault?

Secretary VOLPE. I heard those arguments, Mr. Chairman, for 5 years as Governor, and I can assure you that I have reviewed those arguments. There are personal friends of mine who tell me I am all wrong on this. As a matter of fact, after Massachusetts passed its law last year, two lawyers, both from Boston, both preeminent lawyers, gave me totally contrary judgments—one told me that it was the worst disaster in the history of Massachusetts legislation and would increase the cost of automobile insurance by at least 100 percent over a 4-year period, and the other fellow wanted to bet me all kinds of money or dinners or hats that it would decrease the cost of insurance by 25 percent.

Now, they are both reputable lawyers, but you take your choice as to which you think might be right. I think it is a further indication of the complexity of the problem we have before us.

The CHAIRMAN. Well, we will hear testimony on both sides of this matter. I am sure a great deal of it on the basic question of fault versus no fault.

Now, the Chairman is also somewhat confused and there may be good reasons for this. When the administration proposed a health insurance plan it was separate legislation, was it not, as you recall?

Secretary VOLPE. That is right.

The CHAIRMAN. And Secretary Richardson recommended Federal regulation of health insurance companies, which incidentally are a little bit connected with what we are talking about here.

Secretary VOLPE. Some of them are.

The CHAIRMAN. If a national health insurance system was created federally, I wonder if we could still argue that auto insurance be also made primary? I think we are going to run into that problem, the two methods of approach.

Secretary VOLPE. Mr. Chairman, I would say the difference here is the effective degree of regulation by the States. Health insurance, per se, is not regulated as closely by the States as auto insurance. Therefore, our argument is that the States be allowed to adjust their present regulation to do the job, and we have tried to encourage this through our statement here today, and through the proposition of having the Council of State Governments develop through one of its appropriate subdivisions, model legislation for State enactment that will get the job done.

Now, as I indicated in my testimony, I believe this should be kept under continuing surveillance, and I think that within a 2-year period we ought to review what the States have done. I think the States will act as a result of public opinion in many cases, I am sure this is true in Massachusetts, a form of no-fault insurance finally did pass, and I think it will pass in other States.

It is a question of trying to get them, however, to pass bills that will be as identical or as nearly similar as possible. I think this can be achieved through the development of the kind of model legislation I propose to the Council of State Governments to take on that job along the lines that we propose in the draft concurrent resolution.

The CHAIRMAN. Of course in any event, even assuming that we would proceed with the concurrent resolution approach, we would have a 2½-to 3-year period before it became anywhere near possible to have these States act because in so many States, the legislatures meet in January after the election and go out of session. I would think that it would be most difficult in a great number of States to approach this matter now. Although there has been introduced in the present sessions of State legislatures many of these types of bills.

Now, I don't know how many.

Secretary VOLPE. There are, I am told, about 26 States.

The CHAIRMAN. I know in my State there is a bill pending.

Secretary VOLPE. There are some 26 States in which bills have been introduced in one way or another calling for some type of no fault insurance.

The CHAIRMAN. Well, my experience in getting States to act on many matters involved in interstate commerce has been a little bit disappointing, may I say, over the years. We have had to tackle the matter in many fields in interstate commerce to provide a minimum Federal regulation or guidelines hoping that the States would either subscribe to that or even go above it, make it a tougher law.

This has been true in many consumer bills. Here we are suggesting the same kind of approach that seems to belie the fact that both you and I agree that these reforms are needed now. The startup.

Now, I have no doubt that after a long time of persuasion, and with more States adopting the no-fault law, the more the pressure would be on the States that haven't adopted it, but that it probably would be accomplished. But in the meantime I just feel we are not acting as

Secretary VOLPE. Senator, that expresses very clearly, I think, exactly our philosophy. It is not much different than our philosophy in highway safety standards in which we give the States an opportunity to comply with those safety standards and if they don't, there are certain things we can do to bring them into line. It is rather revealing to see how many States, as a matter of fact, practically all of the States come into line—not because we held a big stick but because we sold them on the idea that this is good for you to do. This will reduce the number of people killed on our highways annually. I would hope this could be the same type of approach we could use here.

Now, we can just pass a Federal law and say we will preempt the field or that this is how it is going to be done in every State regardless of the differences in those States and the complexities of the program. However, until you have had a chance to see the Massachusetts experience—which I don't think can be judged on the basis of some 60 days or 75 days of experience, which, by the way, has been reasonably good—or that of other States you are not going to be able to develop a decision as to which of these various paths that various States are going to take are going to be most productive.

Therefore, although I would like to think as a result of the study we have gathered a great deal of data that indicates directions that should be traveled, on the other hand I don't think this has gotten down to a scientific basis so well that we can say there is absolutely no question that that is the road to travel, every State travel it that way.

Senator COTTON. So, the approach you are suggesting carries a stick and also carries a carrot. It gives the States a chance to see if they can work out their own differences and it also provides, as in the case of Massachusetts and other States that appear to be considering such steps, the chance to provide an exploratory tryout of this system which will be beneficial to all the rest. The time will not be lost, for it will aid the Federal Government in case it becomes necessary to make the system uniform. They will have these benefits of trial and error.

Secretary VOLPE. That is absolutely in agreement with my own opinion, sir.

Senator COTTON. I am almost done, Mr. Chairman.

In your final report submitted today, which, of course, we haven't had time to read thoroughly, I note this language:

It should be emphasized that this is a goal to be achieved over time, not an action blueprint for tomorrow. Moving States toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that would serve to modify the goal itself. A little observation is worth a great deal of speculation and State experience with diverse trends would provide us with ad hoc opportunity for pilot project testing which must receive massive reform.

In other words, that again sounds a caution that experimentation by the States with no-fault insurance might show some fault with no-fault and the system itself which will enable you to avoid taking the time for Federal action.

Secretary VOLPE. Senator, I can only say that the science of this particular subject is such that there are many imponderables, certainly I don't believe there is a member of this committee as far as I know or any of the people in my shop who were working on the study who doesn't believe completely that a change is needed.

Whether or not a specific piece of legislation is going to give us the correct answers, the best answers for the consumer—because that is the man or woman we are trying to please—I can't say at this time until we have had more experience with the different types of no-fault operations that might be conducted in the various States.

Senator COTTON. I certainly agree with you, Mr. Secretary. I started practicing law and trying cases for a firm that represented a large number of liability insurance companies. I was broken into the practice of law largely by trying and defending automobile accident victims and defending insurance companies against claims, both personal injury and property. The fiction was being preserved that the jury wasn't supposed to know whether the defendant was insured, which was a little unfortunate if the defendant was not insured at that time. I well remember the first case I ever tried as a young lawyer. It was not a big case but the firm sent me in to try it, which I did for 3 long days as best I could. I felt that I had presented a real defense and I suppose I am admitting something I shouldn't admit, but I was able through the friendship of a deputy sheriff to get to the jury.

I was so guarding the jury, and so anxious because this was my first case, that he let me come up to the door and listen at the keyhole. After the wonderful defense I set up, the only discussion in the jury room was whether this guy was insured.

So, I think we have all had experiences that indicate that the old system is worn out. However, there is just one other query I have.

If the no-fault system works out and is adopted, either by the States or finally written into the Federal law, one of the problems is whether there will be a great additional cost of insurance to the consumer. Now, the insurance companies will say, presumedly, that one might well save a large amount of money in lawyer fees, trial costs, and all of the other things that go with the present system—including the higher return of premium dollars to the victims of accidents which, as you stated a moment ago, you sought as Governor of Massachusetts.

However, if you get a halfway system whereby personal injury is handled under the no-fault system, and property damages are left to litigation, then perhaps you haven't changed the system sufficiently. Wouldn't that mean a big leakage of premium dollars with the insurance companies going through all the trappings, retaining counsel and contesting some of the claims while others were handled by no-fault?

Secretary VOLPE. I think as I indicated in my testimony, Senator Cotton, that eventually you are going to have to go to no-fault all the way, based upon the knowledge we have today. But it seems to us you ought to approach it in stages rather than try to digest the whole ball of wax at one time.

Senator COTTON. Just one more practical matter.

Didn't Massachusetts have compulsory automobile liability insurance when you served as Governor of that State?

Secretary VOLPE. Yes.

Senator COTTON. Massachusetts adopted that 2 or 3 years before you became Governor, didn't it?

Secretary VOLPE. No; compulsory was in effect for many, many years, as a matter of fact. Some changes were made in it, but basically it was adopted over 35 years ago and I am sorry to say we were only

U.C. BERKELEY LIBRARY

one of three States in the Nation that had it and the number of claims and the cost of automobile accident insurance in Massachusetts was twice the national average. That is why I fought so hard at the time to try to eliminate that type of insurance and go to a financial responsibility law such as New Jersey had or to a no-fault system.

I was completely convinced of the no-fault benefits at that time and in the first bill I had provided for financial responsibility and in that same legislation provided for a study of no-fault so that we would have the benefit of utilizing a change to the financial responsibility law and then the benefit of this study of a no-fault system that could then be adopted if the study indicated it was a desirable thing to do.

Since that period a great deal of additional study has been made both by way of material we have gathered as a result of the DOT study and studies made by the States themselves so there is now a great deal more information available.

Senator COTTON. My own State moves into this theory on the every-dog-is-entitled-to-one-bite system. An owner or driver of an automobile isn't required to have car insurance until he has an accident.

Secretary VOLPE. That is similar to New Jersey.

Senator COTTON. It is a pitfall for the unwary and I think carries all the faults of both systems.

Governor, would you be—pardon me, Mr. Secretary.

I have become accustomed to calling you Governor for many years.

Secretary VOLPE. I prefer Governor, Senator.

Senator COTTON. To continue then, Governor, you consider that it is quite possible that at some subsequent time this might have to be the subject of Federal legislation, but you do feel that first it should be demonstrated that the States can't handle it or won't handle it sufficiently to solve this problem.

Is that a fair summary of your attitude?

Secretary VOLPE. I would say that was reasonably fair, with one additional proviso. I don't want to have the situation remain as it is today with the States just being told: "Well, do the best you can fellows and try to reform this some time soon," without anything else being done. That is why we propose that the Council of State Governments—which I had the privilege of serving as president of some 3 or 4 years ago—through one of its appropriate bodies, be commissioned the task of developing model legislation and have this legislation available reasonably soon so that it could be distributed to each of the State governments that have not acted on this matter by that time. This would give them the opportunity to adopt that model legislation.

Senator COTTON. In connection with your statement, you submitted a suggested resolution for Congress to adopt. In that resolution, which I haven't had an opportunity to study, is there a distinct and definite information to the States that if they don't act we shall?

Secretary VOLPE. Senator Cotton, I don't know that those specific words—

Senator COTTON. Well, I asked if there is some information to that effect.

Secretary VOLPE. The last paragraph, as a matter of fact, of the resolution, the entire resolution, without reading it all \* \* \* "the action taken by each State in moving toward or providing an auto-

mobile accident compensation system, consistent with these principles; the experience of the States with these systems; and concluding with the Secretary's views regarding the feasibility of obtaining a satisfactory and compatible motor vehicle accident reparations systems without further Federal legislation."

In other words, what we are saying is that we should come back to you in 2 years, and if we give you some answers that, in effect, say that no further Federal legislation is required, fine, but if by the same token we believe further Federal legislation is required because the States have not done the job, we are certainly willing to come back and say that. And that pretty well tells the States what they can expect if they don't do the job themselves.

Senator COTTON. Would you agree that we must face the fact that the day the Federal Government finds it necessary to move into this field and make a Federal no-fault law, that same day we certainly would have to move in on the other bill that we had last session concerning insolvencies and the Federal Insurance Guarantee Corp?

In other words, the Federal Government would move into federally regulated insurance regardless of what the States had done and were trying to do.

Secretary VOLPE. It would certainly draw that day much closer, sir.

Senator COTTON. Thank you.

The CHAIRMAN. Well, I think the record ought to show, too, that you say the States very clearly moved off dead center and would appear to be achieving some momentum but you couldn't have made that statement a year ago.

Secretary VOLPE. That is right, sir.

The CHAIRMAN. You know why they are doing it, don't you?

Secretary VOLPE. I think so.

The CHAIRMAN. They are doing it because we have been at them.

Secretary VOLPE. That helps, Mr. Chairman.

The CHAIRMAN. Yes. Take the insurance commissioners. Senator Cotton and I had an experience with them on the insolvency proposals. They wanted State action similar to this and we have waited a long time, haven't we; and it has not happened yet.

Senator COTTON. Well, my State has been pretty good.

The CHAIRMAN. Yes; but they did want us to keep the bill going and keep the pressure on. That will be helpful. So we have to consider a reverse position here such as passing some Federal regulations which say to the States: When you achieve a certain level of performance then you are out from under. But until you do it, the Federal law is going to apply.

We have done that with some laws. I do not know how that would work as a practical matter here.

Then we have to deal with the insurance commissioners in most States. In many of the States they are elected, not appointed.

All right. Senator Hart.

Senator HART. Thank you.

Mr. Secretary, Senator Cotton was talking about his early experience with a jury. You are on notice that two of the jurors up here already have reached our conclusions which sort of destroys zip on any questions I might have, but I will ask them anyway.

I refer to the statement of Senator Magnuson that "Senator Hart and I made our position quite clear that a national no-fault approach is needed and it is needed now."

I have read—not as carefully as I intended—the document that you have filed with us, the report, oral summary of which, or highlights of which you have just given us. I will go back and read it again. But I think most of the questions that you leave unanswered in your oral testimony are answered in the document. So I hope all of us will read the document.

I will make an opening observation here and insist that you not respond.

Secretary VOLPE. I hope the temptation is not too great, Senator.

Senator HART. I am reminded of a quarterback who had about 30 seconds left in the fourth quarter; he is fourth and goal on the 2, 6 points behind, and he knows what play to call. But the coach sends in another signal and he does not call the play he knows will work.

Secretary VOLPE. I won't be tempted, Senator.

Senator COTTON. That is the quarterback that sustained personal injuries. [Laughter.]

Senator HART. That is a quarterback who performs in protection of his scholarship.

Secretary VOLPE. I am not on a scholarship, Senator. Nor do I, thank God, need one.

Senator HART. No; I realize that.

Now, we have been sitting here about an hour, a little more than an hour. In that period of time there have been 2,300 automobile accidents. There have been 500 personal injuries. Fifty-six of those personal injuries are serious, and seven have been killed. What is the difference whether it occurred in Michigan or Massachusetts, first of all? What is the difference? To put it more extreme: Wyoming or Idaho or New York or California?

Secretary VOLPE. If a person is killed, as you and I know, it is a human life lost, no matter where he is killed.

Senator HART. If there is a need for hospitalization, there is a hospital bed either place and, if there is a loss of income, it occurs either or any place.

Secretary VOLPE. Right.

Senator HART. What is the philosophy we are talking about here? You said in answer to a question earlier, you said it was a question of whether you wanted to move on a Federal no-fault now, or a question of dictating to the States. I would suggest that it is an assumption of responsibility which is ours in view of the record here—ours meaning the Federal Government. Would you care to comment on that?

Secretary VOLPE. Yes, sir. I can only say, sir, that the science of the subject that we have been discussing today is only now becoming very well or widely understood. I have had many battles in this area with people who are very close to me, and I have overridden their suggestions or recommendations because I believed, as a result of my experiences and as a result of reviewing the records that were shown to me in my own State, that there ought to be a better way to run a railroad than it was being run in Massachusetts, insofar as automobile accident insurance was concerned.

On the other hand, I think, if we are to preserve in this Nation "federalism," the Federal-State partnership, that unless the States refuse to act that we should do everything we can to preserve that Federal-State partnership, to provide the guidance and leadership to them to act and then if they refuse to act, use the stick if that is necessary and do everything possible in between to bring about a solution without waiting for additional thousands to be killed, or additional thousands to be injured.

The fact is that we are approaching this problem not on one front alone, as I am sure you are probably aware, Senator Hart. We are approaching the problem of crash losses in our highway safety program with a tremendous thrust insofar as alcohol countermeasures programs are concerned.

Fifty percent of the auto accident deaths in this Nation come from that one source. We believe that source is a very rich one for us to try to get rewarding results from. That is why we are attacking that problem as seriously and as fully as we can.

I still cannot help but believe that we do not have final answers as to the best way to go insofar as the no-fault system is concerned, even though you and I can agree completely that there is a need for change, and the no-fault approach appears to be the best avenue for change.

Senator HART. Well, I read your report and indeed got the impression from your oral presentation that with respect to what I think you call stage one, namely, medical and rehabilitation costs and some income protection, that you do know or that you do agree that no-fault is the answer; the stage two, the extending more fully of income protection; and stage three, the property-damage thing, there is less certainty or clarity. But with respect to the need for no-fault for medical expenses and rehabilitation cost and some income insurance I take it no-fault is nailed down as the answer. It is required.

You say in your report that if Congress passes this resolution and if the Council of State governments cranks up, a period of perhaps 5 years seems reasonable, at which time we will find, through the action of 50 State legislatures, national no-fault in this stage one area.

Secretary VOLPE. I would only disagree, Senator, with the 5-year period. I will not disagree with the 5 years insofar as all 50 States are concerned. I would say I would think—having served as president of the Council of State governments, that they could come up with a piece of model legislation in perhaps as little as a year. With the pressures that are building up with the increasing costs, I think we will see a substantial number of these States that will adopt legislation particularly as the results come in from the first States that do this. For instance, in Massachusetts, which will complete a full year this December you will not have just theoretical or problematical answers, you will have actual experience on which a Governor can go before a legislature and say:

I am not talking about theory; I am talking about what actually happened, and this is how much the cost of insurance went down in the State of Massachusetts.

Senator HART. I reopened hearings on this subject in the Antitrust Committee just 5 years ago. And what progress—well, we get a lot more attention, but it is still very much in the discussion stage for those 2,300 people that were involved in accidents in the last hour.

Your report suggests 5 years as a reasonable but admittedly a very tentative projection. What do you say to the 500,000 that will be seriously injured each of those years? Do I say, well, I passed a resolution? Which is why I will continue to be—I assume it will sound heavy-handed, but I will be anxious to insure that we do that which is most likely to give those people the kind of protection that you and I and all of us agree ought to be made available.

The track record in the State legislatures for adoption of model laws, even when nobody is against them, is depressing. The model traffic code, we began to try to sell that in 1934 and we are still selling it, and I do not know anybody who is against it. Certainly no organized segment of the bar. It has the support of the entire insurance industry. Here is 1971 and we are still trying to sell that.

Secretary VOLPE. I would submit, if I may, Senator Hart, that there are other areas, however, where the States have acted, although not as quickly perhaps as you and I would like to see. But you take the National Driver Register, I had to push and push awfully hard, but I finally got my State to join that. All 50 States have now joined it and they see the wisdom of it and the benefits deriving from it.

Senator HART. I will quote a State letter to indicate why some of us have less optimism than even a 5-year period, notwithstanding a public concern and interest, notwithstanding that one State in 50 now has a limited no-fault plan on the books. And one territory, Puerto Rico, where I think you get some answers to some of the questions you raise.

But in any event, here is an Illinois State representative, Anthony Scariano. He sponsored no-fault bills in Illinois, a series of them, and they have all died. He is quoted in this way:

As long as you have a statehouse full of lawyers and insurance men you are not going to have no-fault insurance in your State and that is as certain as the next accident.

Now, this is harsh, I know. But I think one could find some indication of a basis for his comment without even doing a Ph. D. dissertation on the subject of how State legislatures work in this area. How are you going to overcome that resistance? Does this resolution help, do you think?

Secretary VOLPE. I think the resolution would help, sir. I think we have in Massachusetts, and I do not like to use my State particularly, but it just so happens that it is the State that has taken some action first and I think, if I remember correctly, we have as large a percentage of insurance agents, brokers, et cetera, as well as lawyers in the Massachusetts Legislature as there are in any other legislature in the Nation.

It took some time, a lot of pressure, and a lot of hard work on the part of people. The bill came not because it was introduced in one year but because of a lot of work that was done over the course of years and finally it was passed.

Senator HART. I know you put a lot of time in it and the goal—the ultimate goal is the desirable one. But the Massachusetts bill is really an agent's bill with a label "no fault." It takes care of all the small nuisance claims on the first-party basis because it cuts off at \$2,000. Isn't that the figure?

Secretary VOLPE. Yes.

Senator HART. It saves carefully the tort system for the juicy ones. The seriously injured are items on the dockets that pile up for years if they have not been pressured into taking a settlement sooner. So that notwithstanding the energy involved in even getting that much, I think that rather tends to support the view of those of us who would be very pessimistic that the passage of a congressional resolution, a prayer, and good work and time, all of that going on, would give us the action in sufficiently short time as to justify us saying to those who will be injured and killed in the meantime, we are sorry, there is a concept of federalism involved and we are doing the best we can.

That did not hang the President up in recommending that the Federal Government regulate the health insurance field. He said there is a crisis and we have to move in. I would hope it will not hang us up, because the same description is applicable to this area.

I have other questions, but I will pass.

Senator COTTON. Mr. Chairman, I have to go back to the Appropriations Subcommittee. I would like to request that in view of all this discussion that the record of this hearing be held open for perhaps a week, if the Chairman is willing, to afford the Secretary an opportunity to file anything further he might want.

The CHAIRMAN. Without objection.

Senator HART. If I might reserve the right to file in writing these additional questions to which responses can be made, I will do that.

The CHAIRMAN. Yes.

Senator BAKER. Mr. Chairman, I know the hour is late, and I won't take long, but I want to make a preliminary remark or two that I think will set the stage for the few questions I would like to ask the Secretary.

I have a high regard for our distinguished colleague from Michigan; and I am glad he set the stage by pointing out this proceeding is in no way a judicial one, and we don't purport to sit as jurors.

I think it is probably a safe statement, however, to estimate that, just as Senator Hart has expressed a low opinion of the State legislatures of the country, both of us have been in contact with enough of our colleagues in State houses and State senates, to know that they have about the same opinion of us as we have of them.

Also, I am mindful of the fact that there is a genuine concern on the part of the Senator from Michigan and I think of all the members of this committee and the Senate to provide compassionately for those who are injured in automobile accidents, or whose lives are forfeited because of negligence or fortuitous circumstances on the highway, whatever happens to be the case.

But I caution we ought not to confuse the desirability, or lack of it, of changing the tort system with our instinct for self-preservation.

Whatever we do, this resolution may or may not have something to do with the death toll and the number that are maimed and injured on our highways. But if it does, the chances are the passage of a no-fault system would make the matter worse, instead of better.

I express no opinion on my support or opposition to your resolution, Mr. Secretary, or the concept of no-fault insurance at this point. But I hazard the observation that the negligence system, grounded in the common law, complete with its concept of special damages or com-

viously, has not changed in the last 6 months. But complexity, difficulty, or whatever, should no longer stand in the way of action. This administration and I want to cooperate with and support those who also want to get on with the process of reform.

Mr. Chairman, this completes my prepared testimony. We will be happy to answer any questions you or the other members may have.

I have here the proposed concurrent resolution, which I can read if you desire. Each of you have a copy and you may prefer that it be added to the record. I will be guided by your preference, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Secretary.

We will put the concurrent resolution in the record here in full and it will probably be referred to this committee when we meet tomorrow. So we will have that before us and also the bills that have been introduced, mainly the main bill which has been before this committee for some time, and there are some other bills. So we will have before us the opportunity to look at all of these proposals and that is what the committee intends to do.

(The concurrent resolution follows:)

#### CONCURRENT RESOLUTION

Whereas the existing system for compensating motor accident victims results in the unavailability of any benefits to many persons sustaining loss arising out of motor vehicle accidents, including many seriously injured persons and the dependents of many persons killed in such accidents; and

Whereas the existing system's uneven allocation of compensation benefits results in the excessive compensation of many persons sustaining only minor loss, and whereas by contrast many persons with severe and permanently crippling injuries recover only a fraction of their losses in compensation benefits from the system; and

Whereas administration of the system consumes an inordinate amount of resources which might be put to better use in compensating accident victims; and

Whereas the system's benefits tend to be ill-timed and unresponsive to victims' needs both because of long delays in payment and because benefits are predominantly in the form of lump sum payments, and whereas effective rehabilitation of the accident victim tends to be a practical impossibility under the system; and

Whereas the system is supported by, and dependent upon, compulsory insurance or financial responsibility laws which exert varying degrees of compulsion upon motorists to purchase liability insurance without invariably assuring motorists of the availability of automobile insurance; and

Whereas the counterproductive regulatory pressures placed by the system on insurers has led to the development of socially undesirable competition in risk selection accompanied by arbitrary and capricious declinations of insurance, cancellations and refusals of renewal with the consequent growth of a high-risk automobile insurance market serviced in some cases by insurers of questionable financial stability; and

Whereas the system has imposed intolerable burdens on State officials responsible for regulating the rating, underwriting and claims practices of insurers and responding to consumer complaints relating thereto; and

Whereas the system has placed an unreasonable workload on the Federal and State courts which have been forced to devote a disproportionate part of their time and resources to motor vehicle accident civil litigation; and

Whereas the system has resulted in the denial of substantial and equal justice to seriously injured accident victims who are unable to withstand the financial burdens consequent upon long court delays and who are, therefore, forced into inadequate settlements of their claims; and

Whereas the existing liability insurance system renders it impossible rationally to allocate insurance premium costs so as to reflect the ability of a motor vehicle to protect its occupants from serious injury in the event of a crash or to reflect differing costs of repairing motor vehicles; and

Whereas, however, prompted by the Automobile Insurance and Accident Insurance Study mandated by Congress, the Hearings of Congressional committees and the various hearings and studies conducted by many State legislatures, it is now almost universally conceded that there is an imperative need for prompt and far-reaching reform; and

Whereas one State, the Commonwealth of Massachusetts, has taken the lead by enacting the first partial no-fault plan in the country and many of the State legislatures are even now considering far-reaching reforms suited to the needs of their constituencies; and

Whereas the principal problems and abuses with respect to automobile insurance clearly stem from defects in the system for compensating accident victims and from the compulsions upon motorists to obtain the insurance which sustains and upholds that system rather than from defects in the insurance institution or in its regulation by the several States; and

Whereas assumption of the present comprehensive State regulatory authority over automobile insurance by the Federal Government would be fraught with great and grave consequences giving rise to issues and problems of great magnitude, and is highly undesirable; and

Whereas mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform; and

Whereas one State, Massachusetts, has taken an important step toward the principles endorsed herein, and others promise to do so soon so that variants of the plan we endorse will, in the laboratory of the several States, soon be proved and perfected by experience, Now therefore be it

*Resolved*, That it is the sense of the Congress that the regulation of insurance should, in general, continue with the States, subject to the admonition, however, that Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation.

That it is the further sense of the Congress that there must evolve at the State level a rational, equitable and compatible reparation system for motor vehicle accident victims supported and sustained by a similarly rational, equitable and compatible private insurance system, such combined system to be built upon the following principles:

1. Basic benefits should be forthcoming to the injured person on a first-party, contractual basis to the end that such person would be receiving benefits from the insurer with whom he has contracted and to whom he has paid his premiums and to the further end that competition among insurers would take the form of competition to provide prompter and more effective compensation for the premium payer.

2. Basic benefits under the reparations system should be payable to all accident victims without regard to fault, excluding, of course, those who willfully injure themselves.

3. Such benefits should provide compensation for all economic loss, subject to reasonable deductibles and limits, and the tort lawsuit should be eliminated, at least *pro tanto*, avoiding the adversary process for the mass of accidents.

4. The function of the reparations system should be to afford adequate, but not excessive, compensation to the accident victim at minimum cost. Therefore, the benefits obtainable by the accident victim from other benefit sources should be coordinated and meshed with those obtainable from the automobile accident reparations system with a view toward internalizing automobile accident loss costs by making automobile insurance the primary benefit source whenever feasible.

5. Maximum choice should be afforded the motorist in selecting his insurance source provided the coverage complies with the principles for the required minimum mandatory coverage.

6. Rehabilitation, avocational as well as vocational, should be a primary function and objective of the compensation system.

That it is the further sense of the Congress that the Secretary of Transportation be authorized and directed to request that the Council of State Governments, using the appropriate instrumentalities, develop model legislation for submission to the States for their consideration. The Secretary is further authorized and directed to analyze the actions of the States, their legislatures and insurance regulatory officials to determine to what extent such States act hereafter to bring about motor vehicle insurance and accident compensation systems consistent with the intent of this resolution; to provide technical assistance to and interact with such States, their legislatures and insurance regulatory officials in effecting in all the States compensation systems consistent with such

principles, and to report such progress as has been made, or is being made, in effecting such compensation systems, with a final report to be made by the Secretary not later than 25 months hereafter detailing the action taken by each State in moving toward or providing an automobile accident compensation system consistent with these principles; the experience of the States with these systems; and, concluding with the Secretary's views regarding the feasibility of attaining a satisfactory and compatible motor vehicle accident reparations system without further Federal legislation.

The CHAIRMAN. Now, I know that members of the committee have many questions to ask because this is a complex subject and will require, I am sure, some study on behalf of the committee members themselves.

They may have some different ideas about some of the things that are suggested. But I just want to ask this one question: On the basis of your statement, would it be fair to say that as far as the administration is concerned, the fault versus the no-fault issue has now been resolved?

Secretary VOLPE. Yes, sir.

The CHAIRMAN. And it is called for too in the major bill before this committee?

Secretary VOLPE. Yes, sir.

The CHAIRMAN. Leaving aside the issue of time and how it is accomplished, do you think we should go to a no-fault auto insurance system to cover most losses that occur as a result of automobile accidents? I think you answered that yourself in your statement.

Secretary VOLPE. Yes.

The CHAIRMAN. But this is an important point to focus on. I suppose you will answer yes to this question, reaching this conclusion, you and your advisers and those who conducted the study took into account the traditional arguments against no fault?

Secretary VOLPE. I heard those arguments, Mr. Chairman, for 5 years as Governor, and I can assure you that I have reviewed those arguments. There are personal friends of mine who tell me I am all wrong on this. As a matter of fact, after Massachusetts passed its law last year, two lawyers, both from Boston, both preeminent lawyers, gave me totally contrary judgments—one told me that it was the worst disaster in the history of Massachusetts legislation and would increase the cost of automobile insurance by at least 100 percent over a 4-year period, and the other fellow wanted to bet me all kinds of money or dinners or hats that it would decrease the cost of insurance by 25 percent.

Now, they are both reputable lawyers, but you take your choice as to which you think might be right. I think it is a further indication of the complexity of the problem we have before us.

The CHAIRMAN. Well, we will hear testimony on both sides of this matter. I am sure a great deal of it on the basic question of fault versus no fault.

Now, the Chairman is also somewhat confused and there may be good reasons for this. When the administration proposed a health insurance plan it was separate legislation, was it not, as you recall?

Secretary VOLPE. That is right.

The CHAIRMAN. And Secretary Richardson recommended Federal regulation of health insurance companies, which incidentally are a little bit connected with what we are talking about here.

Secretary VOLPE. Some of them are.

The CHAIRMAN. If a national health insurance system was created federally, I wonder if we could still argue that auto insurance be also made primary? I think we are going to run into that problem, the two methods of approach.

Secretary VOLPE. Mr. Chairman, I would say the difference here is the effective degree of regulation by the States. Health insurance, per se, is not regulated as closely by the States as auto insurance. Therefore, our argument is that the States be allowed to adjust their present regulation to do the job, and we have tried to encourage this through our statement here today, and through the proposition of having the Council of State Governments develop through one of its appropriate subdivisions, model legislation for State enactment that will get the job done.

Now, as I indicated in my testimony, I believe this should be kept under continuing surveillance, and I think that within a 2-year period we ought to review what the States have done. I think the States will act as a result of public opinion in many cases, I am sure this is true in Massachusetts, a form of no-fault insurance finally did pass, and I think it will pass in other States.

It is a question of trying to get them, however, to pass bills that will be as identical or as nearly similar as possible. I think this can be achieved through the development of the kind of model legislation I propose to the Council of State Governments to take on that job along the lines that we propose in the draft concurrent resolution.

The CHAIRMAN. Of course in any event, even assuming that we would proceed with the concurrent resolution approach, we would have a 2½-to 3-year period before it became anywhere near possible to have these States act because in so many States, the legislatures meet in January after the election and go out of session. I would think that it would be most difficult in a great number of States to approach this matter now. Although there has been introduced in the present sessions of State legislatures many of these types of bills.

Now, I don't know how many.

Secretary VOLPE. There are, I am told, about 26 States.

The CHAIRMAN. I know in my State there is a bill pending.

Secretary VOLPE. There are some 26 States in which bills have been introduced in one way or another calling for some type of no fault insurance.

The CHAIRMAN. Well, my experience in getting States to act on many matters involved in interstate commerce has been a little bit disappointing, may I say, over the years. We have had to tackle the matter in many fields in interstate commerce to provide a minimum Federal regulation or guidelines hoping that the States would either subscribe to that or even go above it, make it a tougher law.

This has been true in many consumer bills. Here we are suggesting the same kind of approach that seems to belie the fact that both you and I agree that these reforms are needed now. The startup.

Now, I have no doubt that after a long time of persuasion, and with more States adopting the no-fault law, the more the pressure would be on the States that haven't adopted it, but that it probably would be accomplished. But in the meantime I just feel we are not acting as

promptly as we should in this matter. But that is my opinion and I will look at the report.

Now, do you have in the report a review? I haven't had a chance to look at it all yet—a review on the cost figures to the public if one system was adopted as against other system, or do you have it merely as to what the cost figures would be, the way it is now, and whether or not it would cost more to the public or less?

Secretary VOLPE. May I have Charlie Baker answer that question, please, Mr. Chairman?

Mr. BAKER. Mr. Chairman—

The CHAIRMAN. Is that on page 138?

Mr. BAKER. Pages 138 and 139; yes, sir. This is a summary of the cost aspects of some of the changes that are suggested in this report. This is what we have tried to make clear in both the report and the Secretary's testimony. There is a great deal of controversy and different analyses have been provided by interested parties on what the precise cost impacts of various no-fault plans would be.

Nonetheless, on these pages we have summarized what we believe will be the underlying factors which will lead to significant cost improvement in the system, sir.

The CHAIRMAN. Well, you say it would appear, and the Secretary's statement is that the true cost of compensating the socially significant losses from motor vehicle accidents should be reduced since more of the insurance premium dollar would go for needed benefits and less for system expenses.

Then you say further on, equity of a better compensation system should not yield to cost in our list of priorities.

Are they inconsistent, those two statements?

Mr. BAKER. I don't think so, Mr. Chairman.

I think what we are suggesting is—

The CHAIRMAN. I don't think they are as to objectives, but as a practical matter are they inconsistent?

Mr. BAKER. I think we are suggesting two things here, Mr. Chairman. First, that, fundamentally, the cost of operating the system could in fact be improved by the approaches there recommended; but, second, that the objective of providing full reparations for the socially significant economic losses of the injured parties should be an all-important objective of any measure of reform.

The CHAIRMAN. Well, we will look at that, and I just have one more observation. It isn't a question. We will read this final report carefully and go over it and the legislation.

But I am wondering why we don't suggest, or you don't, that if we are going to do this, even assuming we would do it in stages, why we shouldn't move to the first stage now? On a Federal level?

Secretary VOLPE. I think, Mr. Chairman, that just comes down to the basic philosophy of whether or not we desire to undertake to accomplish this job through Federal—well, call it dictation as some people do, that would apply the same solution at the same time both in New York and Wyoming. I think all of us would recognize the problems are quite different in New York and Massachusetts, than they might be in Wyoming or Idaho.

So we are suggesting if the States don't take the kind of action which you and I believe are essential, then, as is necessary, we can

provide not only guidelines as we are trying to provide today, but we can actually provide standards below which they can't go and above which they might want to go.

The CHAIRMAN. When I speak of the first stage, I am thinking in terms of compulsory insurance covering basic economic loss.

Now, I am not speaking about all of the different guidelines and procedures involved in accidents and things, but I am speaking about the coverage as a first stage.

Secretary VOLPE. We have had compulsory personal injury liability insurance in Massachusetts, Mr. Chairman, for 40 years almost. Contrary to what some people say, that is, "We have done it this way for 40 years, and if it was good enough 40 years ago, it is good enough now." I just didn't agree with that thesis at all, and that is why we tried to change it.

The fact is, too much of the premium dollar was not going to the people who were being injured, and that is why I felt rather strongly it ought to be changed.

The CHAIRMAN. Now, I know the committee members have some questions and I don't have any more, particularly. I may have some a little later.

Senator Cotton?

Senator COTTON. Mr. Secretary, I gather that the thrust of your testimony herè today is directed toward implementing your Department's 2-year study by encouraging State action and not Federal preemption at the present time. Is that correct?

Secretary VOLPE. That is correct, sir.

Senator COTTON. I think I am correct and that the record bears me out when I say that the position you advocated back on October 7, in answer to some of my own questions, is consistent with your position today. You stated in part last October 7:

I think that we ought to be able, if we develop a set of guidelines, a broad outline, to develop the kind of cooperation with the states that I think will assure success.

Do you recall that statement?

Secretary VOLPE. Yes; I do, sir.

I have those places marked in this copy of my testimony in case this came up.

Senator COTTON. That is entirely consistent with the position that you are taking today, or rather your position today is somewhat of an expansion and a particularization of your general statement last October.

Secretary VOLPE. You are absolutely correct.

Senator COTTON. Now, in one of your reports entitled "Economic Regulation of Insurance in the United States," the following statement appears:

By threatening to assume the regulatory function, the Federal authority may accomplish more than by actually assuming it.

Now, I assume this is the big stick in the whole proposition. Rather than to move headlong into a new field by assuming the federalization of insurance it is your position that giving the States a chance to operate, with the very clear implication if they don't Federal action may follow, is all that is needed.

Is that a correct statement of your approach?

Secretary VOLPE. Senator, that expresses very clearly, I think, exactly our philosophy. It is not much different than our philosophy in highway safety standards in which we give the States an opportunity to comply with those safety standards and if they don't, there are certain things we can do to bring them into line. It is rather revealing to see how many States, as a matter of fact, practically all of the States come into line—not because we held a big stick but because we sold them on the idea that this is good for you to do. This will reduce the number of people killed on our highways annually. I would hope this could be the same type of approach we could use here.

Now, we can just pass a Federal law and say we will preempt the field or that this is how it is going to be done in every State regardless of the differences in those States and the complexities of the program. However, until you have had a chance to see the Massachusetts experience—which I don't think can be judged on the basis of some 60 days or 75 days of experience, which, by the way, has been reasonably good—or that of other States you are not going to be able to develop a decision as to which of these various paths that various States are going to take are going to be most productive.

Therefore, although I would like to think as a result of the study we have gathered a great deal of data that indicates directions that should be traveled, on the other hand I don't think this has gotten down to a scientific basis so well that we can say there is absolutely no question that that is the road to travel, every State travel it that way.

Senator COTTON. So, the approach you are suggesting carries a stick and also carries a carrot. It gives the States a chance to see if they can work out their own differences and it also provides, as in the case of Massachusetts and other States that appear to be considering such steps, the chance to provide an exploratory tryout of this system which will be beneficial to all the rest. The time will not be lost, for it will aid the Federal Government in case it becomes necessary to make the system uniform. They will have these benefits of trial and error.

Secretary VOLPE. That is absolutely in agreement with my own opinion, sir.

Senator COTTON. I am almost done, Mr. Chairman.

In your final report submitted today, which, of course, we haven't had time to read thoroughly, I note this language:

It should be emphasized that this is a goal to be achieved over time, not an action blueprint for tomorrow. Moving States toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that would serve to modify the goal itself. A little observation is worth a great deal of speculation and State experience with diverse trends would provide us with ad hoc opportunity for pilot project testing which must receive massive reform.

In other words, that again sounds a caution that experimentation by the States with no-fault insurance might show some fault with no-fault and the system itself which will enable you to avoid taking the time for Federal action.

Secretary VOLPE. Senator, I can only say that the science of this particular subject is such that there are many imponderables, certainly I don't believe there is a member of this committee as far as I know or any of the people in my shop who were working on the study who doesn't believe completely that a change is needed.

Whether or not a specific piece of legislation is going to give us the correct answers, the best answers for the consumer—because that is the man or woman we are trying to please—I can't say at this time until we have had more experience with the different types of no-fault operations that might be conducted in the various States.

Senator COTTON. I certainly agree with you, Mr. Secretary. I started practicing law and trying cases for a firm that represented a large number of liability insurance companies. I was broken into the practice of law largely by trying and defending automobile accident victims and defending insurance companies against claims, both personal injury and property. The fiction was being preserved that the jury wasn't supposed to know whether the defendant was insured, which was a little unfortunate if the defendant was not insured at that time. I well remember the first case I ever tried as a young lawyer. It was not a big case but the firm sent me in to try it, which I did for 3 long days as best I could. I felt that I had presented a real defense and I suppose I am admitting something I shouldn't admit, but I was able through the friendship of a deputy sheriff to get to the jury.

I was so guarding the jury, and so anxious because this was my first case, that he let me come up to the door and listen at the keyhole. After the wonderful defense I set up, the only discussion in the jury room was whether this guy was insured.

So, I think we have all had experiences that indicate that the old system is worn out. However, there is just one other query I have.

If the no-fault system works out and is adopted, either by the States or finally written into the Federal law, one of the problems is whether there will be a great additional cost of insurance to the consumer. Now, the insurance companies will say, presumedly, that one might well save a large amount of money in lawyer fees, trial costs, and all of the other things that go with the present system—including the higher return of premium dollars to the victims of accidents which, as you stated a moment ago, you sought as Governor of Massachusetts.

However, if you get a halfway system whereby personal injury is handled under the no-fault system, and property damages are left to litigation, then perhaps you haven't changed the system sufficiently. Wouldn't that mean a big leakage of premium dollars with the insurance companies going through all the trappings, retaining counsel and contesting some of the claims while others were handled by no-fault?

Secretary VOLPE. I think as I indicated in my testimony, Senator Cotton, that eventually you are going to have to go to no-fault all the way, based upon the knowledge we have today. But it seems to us you ought to approach it in stages rather than try to digest the whole ball of wax at one time.

Senator COTTON. Just one more practical matter.

Didn't Massachusetts have compulsory automobile liability insurance when you served as Governor of that State?

Secretary VOLPE. Yes.

Senator COTTON. Massachusetts adopted that 2 or 3 years before you became Governor, didn't it?

Secretary VOLPE. No; compulsory was in effect for many, many years, as a matter of fact. Some changes were made in it, but basically it was adopted over 35 years ago and I am sorry to say we were only

one of three States in the Nation that had it and the number of claims and the cost of automobile accident insurance in Massachusetts was twice the national average. That is why I fought so hard at the time to try to eliminate that type of insurance and go to a financial responsibility law such as New Jersey had or to a no-fault system.

I was completely convinced of the no-fault benefits at that time and in the first bill I had provided for financial responsibility and in that same legislation provided for a study of no-fault so that we would have the benefit of utilizing a change to the financial responsibility law and then the benefit of this study of a no-fault system that could then be adopted if the study indicated it was a desirable thing to do.

Since that period a great deal of additional study has been made both by way of material we have gathered as a result of the DOT study and studies made by the States themselves so there is now a great deal more information available.

Senator COTTON. My own State moves into this theory on the every-dog-is-entitled-to-one-bite system. An owner or driver of an automobile isn't required to have car insurance until he has an accident.

Secretary VOLPE. That is similar to New Jersey.

Senator COTTON. It is a pitfall for the unwary and I think carries all the faults of both systems.

Governor, would you be—pardon me, Mr. Secretary.

I have become accustomed to calling you Governor for many years.

Secretary VOLPE. I prefer Governor, Senator.

Senator COTTON. To continue then, Governor, you consider that it is quite possible that at some subsequent time this might have to be the subject of Federal legislation, but you do feel that first it should be demonstrated that the States can't handle it or won't handle it sufficiently to solve this problem.

Is that a fair summary of your attitude?

Secretary VOLPE. I would say that was reasonably fair, with one additional proviso. I don't want to have the situation remain as it is today with the States just being told: "Well, do the best you can fellows and try to reform this some time soon," without anything else being done. That is why we propose that the Council of State Governments—which I had the privilege of serving as president of some 3 or 4 years ago—through one of its appropriate bodies, be commissioned the task of developing model legislation and have this legislation available reasonably soon so that it could be distributed to each of the State governments that have not acted on this matter by that time. This would give them the opportunity to adopt that model legislation.

Senator COTTON. In connection with your statement, you submitted a suggested resolution for Congress to adopt. In that resolution, which I haven't had an opportunity to study, is there a distinct and definite information to the States that if they don't act we shall?

Secretary VOLPE. Senator Cotton, I don't know that those specific words—

Senator COTTON. Well, I asked if there is some information to that effect.

Secretary VOLPE. The last paragraph, as a matter of fact, of the resolution, the entire resolution, without reading it all \* \* \* "the action taken by each State in moving toward or providing an auto-

mobile accident compensation system, consistent with these principles; the experience of the States with these systems; and concluding with the Secretary's views regarding the feasibility of obtaining a satisfactory and compatible motor vehicle accident reparations systems without further Federal legislation."

In other words, what we are saying is that we should come back to you in 2 years, and if we give you some answers that, in effect, say that no further Federal legislation is required, fine, but if by the same token we believe further Federal legislation is required because the States have not done the job, we are certainly willing to come back and say that. And that pretty well tells the States what they can expect if they don't do the job themselves.

Senator COTTON. Would you agree that we must face the fact that the day the Federal Government finds it necessary to move into this field and make a Federal no-fault law, that same day we certainly would have to move in on the other bill that we had last session concerning insolvencies and the Federal Insurance Guarantee Corp?

In other words, the Federal Government would move into federally regulated insurance regardless of what the States had done and were trying to do.

Secretary VOLPE. It would certainly draw that day much closer, sir.

Senator COTTON. Thank you.

The CHAIRMAN. Well, I think the record ought to show, too, that you say the States very clearly moved off dead center and would appear to be achieving some momentum but you couldn't have made that statement a year ago.

Secretary VOLPE. That is right, sir.

The CHAIRMAN. You know why they are doing it, don't you?

Secretary VOLPE. I think so.

The CHAIRMAN. They are doing it because we have been at them.

Secretary VOLPE. That helps, Mr. Chairman.

The CHAIRMAN. Yes. Take the insurance commissioners. Senator Cotton and I had an experience with them on the insolvency proposals. They wanted State action similar to this and we have waited a long time, haven't we; and it has not happened yet.

Senator COTTON. Well, my State has been pretty good.

The CHAIRMAN. Yes; but they did want us to keep the bill going and keep the pressure on. That will be helpful. So we have to consider a reverse position here such as passing some Federal regulations which say to the States: When you achieve a certain level of performance then you are out from under. But until you do it, the Federal law is going to apply.

We have done that with some laws. I do not know how that would work as a practical matter here.

Then we have to deal with the insurance commissioners in most States. In many of the States they are elected, not appointed.

All right. Senator Hart.

Senator HART. Thank you.

Mr. Secretary, Senator Cotton was talking about his early experience with a jury. You are on notice that two of the jurors up here already have reached our conclusions which sort of destroys zip on any questions I might have, but I will ask them anyway.

I refer to the statement of Senator Magnuson that "Senator Hart and I made our position quite clear that a national no-fault approach is needed and it is needed now."

I have read—not as carefully as I intended—the document that you have filed with us, the report, oral summary of which, or highlights of which you have just given us. I will go back and read it again. But I think most of the questions that you leave unanswered in your oral testimony are answered in the document. So I hope all of us will read the document.

I will make an opening observation here and insist that you not respond.

Secretary VOLPE. I hope the temptation is not too great, Senator.

Senator HART. I am reminded of a quarterback who had about 30 seconds left in the fourth quarter; he is fourth and goal on the 2, 6 points behind, and he knows what play to call. But the coach sends in another signal and he does not call the play he knows will work.

Secretary VOLPE. I won't be tempted, Senator.

Senator COTTON. That is the quarterback that sustained personal injuries. [Laughter.]

Senator HART. That is a quarterback who performs in protection of his scholarship.

Secretary VOLPE. I am not on a scholarship, Senator. Nor do I, thank God, need one.

Senator HART. No; I realize that.

Now, we have been sitting here about an hour, a little more than an hour. In that period of time there have been 2,300 automobile accidents. There have been 500 personal injuries. Fifty-six of those personal injuries are serious, and seven have been killed. What is the difference whether it occurred in Michigan or Massachusetts, first of all? What is the difference? To put it more extreme: Wyoming or Idaho or New York or California?

Secretary VOLPE. If a person is killed, as you and I know, it is a human life lost, no matter where he is killed.

Senator HART. If there is a need for hospitalization, there is a hospital bed either place and, if there is a loss of income, it occurs either or any place.

Secretary VOLPE. Right.

Senator HART. What is the philosophy we are talking about here? You said in answer to a question earlier, you said it was a question of whether you wanted to move on a Federal no-fault now, or a question of dictating to the States. I would suggest that it is an assumption of responsibility which is ours in view of the record here—ours meaning the Federal Government. Would you care to comment on that?

Secretary VOLPE. Yes, sir. I can only say, sir, that the science of the subject that we have been discussing today is only now becoming very well or widely understood. I have had many battles in this area with people who are very close to me, and I have overridden their suggestions or recommendations because I believed, as a result of my experiences and as a result of reviewing the records that were shown to me in my own State, that there ought to be a better way to run a railroad than it was being run in Massachusetts, insofar as automobile accident insurance was concerned.

On the other hand, I think, if we are to preserve in this Nation "federalism," the Federal-State partnership, that unless the States refuse to act that we should do everything we can to preserve that Federal-State partnership, to provide the guidance and leadership to them to act and then if they refuse to act, use the stick if that is necessary and do everything possible in between to bring about a solution without waiting for additional thousands to be killed, or additional thousands to be injured.

The fact is that we are approaching this problem not on one front alone, as I am sure you are probably aware, Senator Hart. We are approaching the problem of crash losses in our highway safety program with a tremendous thrust insofar as alcohol countermeasures programs are concerned.

Fifty percent of the auto accident deaths in this Nation come from that one source. We believe that source is a very rich one for us to try to get rewarding results from. That is why we are attacking that problem as seriously and as fully as we can.

I still cannot help but believe that we do not have final answers as to the best way to go insofar as the no-fault system is concerned, even though you and I can agree completely that there is a need for change, and the no-fault approach appears to be the best avenue for change.

Senator HART. Well, I read your report and indeed got the impression from your oral presentation that with respect to what I think you call stage one, namely, medical and rehabilitation costs and some income protection, that you do know or that you do agree that no-fault is the answer; the stage two, the extending more fully of income protection; and stage three, the property-damage thing, there is less certainty or clarity. But with respect to the need for no-fault for medical expenses and rehabilitation cost and some income insurance I take it no-fault is nailed down as the answer. It is required.

You say in your report that if Congress passes this resolution and if the Council of State governments cranks up, a period of perhaps 5 years seems reasonable, at which time we will find, through the action of 50 State legislatures, national no-fault in this stage one area.

Secretary VOLPE. I would only disagree, Senator, with the 5-year period. I will not disagree with the 5 years insofar as all 50 States are concerned. I would say I would think—having served as president of the Council of State governments, that they could come up with a piece of model legislation in perhaps as little as a year. With the pressures that are building up with the increasing costs, I think we will see a substantial number of these States that will adopt legislation particularly as the results come in from the first States that do this. For instance, in Massachusetts, which will complete a full year this December you will not have just theoretical or problematical answers, you will have actual experience on which a Governor can go before a legislature and say:

I am not talking about theory; I am talking about what actually happened, and this is how much the cost of insurance went down in the State of Massachusetts.

Senator HART. I reopened hearings on this subject in the Antitrust Committee just 5 years ago. And what progress—well, we get a lot more attention, but it is still very much in the discussion stage for those 2,300 people that were involved in accidents in the last hour.

Your report suggests 5 years as a reasonable but admittedly a very tentative projection. What do you say to the 500,000 that will be seriously injured each of those years? Do I say, well, I passed a resolution? Which is why I will continue to be—I assume it will sound heavy-handed, but I will be anxious to insure that we do that which is most likely to give those people the kind of protection that you and I and all of us agree ought to be made available.

The track record in the State legislatures for adoption of model laws, even when nobody is against them, is depressing. The model traffic code, we began to try to sell that in 1934 and we are still selling it, and I do not know anybody who is against it. Certainly no organized segment of the bar. It has the support of the entire insurance industry. Here is 1971 and we are still trying to sell that.

Secretary VOLPE. I would submit, if I may, Senator Hart, that there are other areas, however, where the States have acted, although not as quickly perhaps as you and I would like to see. But you take the National Driver Register, I had to push and push awfully hard, but I finally got my State to join that. All 50 States have now joined it and they see the wisdom of it and the benefits deriving from it.

Senator HART. I will quote a State letter to indicate why some of us have less optimism than even a 5-year period, notwithstanding a public concern and interest, notwithstanding that one State in 50 now has a limited no-fault plan on the books. And one territory, Puerto Rico, where I think you get some answers to some of the questions you raise.

But in any event, here is an Illinois State representative, Anthony Scariano. He sponsored no-fault bills in Illinois, a series of them, and they have all died. He is quoted in this way:

As long as you have a statehouse full of lawyers and insurance men you are not going to have no-fault insurance in your State and that is as certain as the next accident.

Now, this is harsh, I know. But I think one could find some indication of a basis for his comment without even doing a Ph. D. dissertation on the subject of how State legislatures work in this area. How are you going to overcome that resistance? Does this resolution help, do you think?

Secretary VOLPE. I think the resolution would help, sir. I think we have in Massachusetts, and I do not like to use my State particularly, but it just so happens that it is the State that has taken some action first and I think, if I remember correctly, we have as large a percentage of insurance agents, brokers, et cetera, as well as lawyers in the Massachusetts Legislature as there are in any other legislature in the Nation.

It took some time, a lot of pressure, and a lot of hard work on the part of people. The bill came not because it was introduced in one year but because of a lot of work that was done over the course of years and finally it was passed.

Senator HART. I know you put a lot of time in it and the goal—the ultimate goal is the desirable one. But the Massachusetts bill is really an agent's bill with a label "no fault." It takes care of all the small nuisance claims on the first-party basis because it cuts off at \$2,000. Isn't that the figure?

Secretary VOLPE. Yes.

Senator HART. It saves carefully the tort system for the juicy ones. The seriously injured are items on the dockets that pile up for years if they have not been pressured into taking a settlement sooner. So that notwithstanding the energy involved in even getting that much, I think that rather tends to support the view of those of us who would be very pessimistic that the passage of a congressional resolution, a prayer, and good work and time, all of that going on, would give us the action in sufficiently short time as to justify us saying to those who will be injured and killed in the meantime, we are sorry, there is a concept of federalism involved and we are doing the best we can.

That did not hang the President up in recommending that the Federal Government regulate the health insurance field. He said there is a crisis and we have to move in. I would hope it will not hang us up, because the same description is applicable to this area.

I have other questions, but I will pass.

Senator COTTON. Mr. Chairman, I have to go back to the Appropriations Subcommittee. I would like to request that in view of all this discussion that the record of this hearing be held open for perhaps a week, if the Chairman is willing, to afford the Secretary an opportunity to file anything further he might want.

The CHAIRMAN. Without objection.

Senator HART. If I might reserve the right to file in writing these additional questions to which responses can be made, I will do that.

The CHAIRMAN. Yes.

Senator BAKER. Mr. Chairman, I know the hour is late, and I won't take long, but I want to make a preliminary remark or two that I think will set the stage for the few questions I would like to ask the Secretary.

I have a high regard for our distinguished colleague from Michigan; and I am glad he set the stage by pointing out this proceeding is in no way a judicial one, and we don't purport to sit as jurors.

I think it is probably a safe statement, however, to estimate that, just as Senator Hart has expressed a low opinion of the State legislatures of the country, both of us have been in contact with enough of our colleagues in State houses and State senates, to know that they have about the same opinion of us as we have of them.

Also, I am mindful of the fact that there is a genuine concern on the part of the Senator from Michigan and I think of all the members of this committee and the Senate to provide compassionately for those who are injured in automobile accidents, or whose lives are forfeited because of negligence or fortuitous circumstances on the highway, whatever happens to be the case.

But I caution we ought not to confuse the desirability, or lack of it, of changing the tort system with our instinct for self-preservation.

Whatever we do, this resolution may or may not have something to do with the death toll and the number that are maimed and injured on our highways. But if it does, the chances are the passage of a no-fault system would make the matter worse, instead of better.

I express no opinion on my support or opposition to your resolution, Mr. Secretary, or the concept of no-fault insurance at this point. But I hazard the observation that the negligence system, grounded in the common law, complete with its concept of special damages or com-

pensatory damages and punitive damages, is not only calculated to compensate for injuries or death or property damage, but also to defer and provide a disincentive for those who drive automobiles to act recklessly. Evidence the number of punitive damage verdicts and judgments that are awarded in this country on both the State and Federal judicial system.

I have only this additional comment now by way of prolog. What this committee is seeing today, in the accident statistics quoted by the distinguished Senator from Michigan and by others and in your comments and recommendations to this committee, is a sad, sad commentary on the failure of the judicial system in the United States of America.

Because what we are seeing is inequity run rampant in automobile personal injury cases and in some property damage cases. Now we are called upon to change that system, the negligence system, the tort system and go to a system of level response and damages such as workmen's compensation instead.

Now there is some lawyer left in me after my 5 years in the Senate. Not much and maybe not very good, but there is some, and that impels me to suggest that the fault system, that the negligence and tort system is not all that bad. Its execution has been extraordinarily poor and maybe I will be forgiven for hazarding the estimate that if the judiciary in the United States would stop trying to act like legislatures and start acting like the judiciary in trying lawsuits and interpreting law, maybe the legislatures would stop trying to act like the judiciary and start acting like the legislature.

We have here a conflict in our responsibility to provide for the welfare of the people that ride the highways and travel and those that do not, but are affected by that activity on the one hand, and the principles of reparations and compensation on the other.

I suggest in this preliminary statement that we caution ourselves to observe that no-fault insurance, or a no-fault system is not necessarily synonymous with a reduction in the death and injury total on the Nation's highways, nor is it necessarily better. It depends entirely on its implementation.

I suggest that if the Senator from Michigan or I were involved in an automobile accident, and God forbid, he or I were totally disabled and unconscious for the remaining portion of our life expectancy, it might be a difficult burden to bear for our families to know that there is a limited amount of compensation they could receive.

Senator HART. I would ask the Senator to read the Magnuson and Hart bill. It isn't a little, either.

Senator BAKER. Well, I am making an analogy with the workmen's compensation system.

Senator HART. I am glad you made clear it is not analogous in the Magnuson-Hart bill.

Senator BAKER. I will conclude these remarks briefly, and the Senator and I can have a further conference. But I would ask the Secretary to provide for the record, his commentary and those of his staff on these points. One is jurisdiction of this committee. I expect we do have jurisdiction and I expect it is not appropriate for you to comment on it, but we are dealing with such a fundamental point

in the body of the generic law that it seems to me we, at least, need to coordinate with the Committee on the Judiciary.

Item two, whether or not this is consistent with the policy enunciated in your proposed joint resolution or any legislation that might flow from it, the concept of responsibility for negligence or punitive damages as well as the no-fault concept.

Item three, whether or not this would be implemented in the State courts as well as in the Federal courts, and if so, what further changes would be necessary in the Federal judicial code or the Federal rules of civil procedure, particularly that relating to diversity of citizenship, which confers jurisdiction on the Federal judiciary.

And last, whether or not, and I think there isn't but whether or not there is any remaining residual of doubt in your minds as to whether this Congress, under these circumstances, is tinkering with the due process clause of the Federal Constitution or the rights of an individual citizen to limit the amount of his recovery.

The comments on those questions can be supplied for the after-file record, Mr. Chairman.

I won't delay these proceedings further at this time.

Secretary VOLPE. We will be happy to supply them, Senator.

(The following information was subsequently submitted by the Department of Transportation in response to the four "Items" or questions posed by Senator Baker:)

Item 1. With respect to the jurisdiction of the Commerce Committee referable to the Administration's proposed Concurrent Resolution, we feel this issue is subject entirely to the legislative prerogative and wish to express no opinion on this subject.

Item 2. In connection with the question whether no-fault automobile reparations systems would be inconsistent with amenability of the motorist to punitive damages for willful, wanton or other flagrant misconduct, it would seem that under such a system the theme of liability for punitive or exemplary damages could easily be preserved. However, any such retention of a cause of action for punitive damages should be accompanied by a clear statement of public policy to the effect that no motorist could purchase, nor any insurer sell, insurance protecting such motorist from his liability for exemplary damages, i.e., damages which do not have as their purpose the compensation of the injured party but rather are for punishing the wrongdoer and deterring him and others from the type of misconduct leading to the imposition of punitive damages.

While, admittedly, the courts are divided on the issue, it is felt that the better rule even today is that it is against public policy to permit an automobile liability insurance policy to insulate the insured from his liability for punitive damages where such damages are predicated upon the objectives of punishment and deterrence rather than upon compensation of the innocent victim's injuries. It is quite obvious that where automobile liability insurance is permitted to cover the exemplary damages and those damages are included in the loss experience, upon which insurance rates are made, the general insuring public is the recipient of the punishment intended for the wrongdoer who, himself, is thereby insulated from the financial consequences of his flagrant misconduct and any deterrent propensities of punitive damages are thereby lost.

What would seem to be the better rule can be found in the court's holding in *Northwestern National Casualty Co. v. McNulty*, 307 F. 2d 432 (USCA-5-1962) that both the public policy of Virginia (where the policy was sold) and Florida (where the accident occurred) prohibited insurance against liability for punitive damages.

"The policy considerations in a State where, as in Florida and Virginia, punitive damages are awarded for punishment and deterrence, would seem to require that the damages rest ultimately as well as nominally on the party responsible for the wrong. If that person were permitted to shift the burden to an insurance company, punitive damages would serve no useful purpose. Such damages do not compensate the plaintiff for his injury since compensatory damages have

already made the plaintiff whole. And there is no point in punishing the insurance company; it has done no wrong. In actual fact, of course, and considering the extent to which the public is insured, the burden would ultimately come to rest not on the insurance companies but on the public, since the added liability to the insurance companies would be passed along to the premium payers. Society would then be punishing itself for the wrong committed by the insured . . . [T]he delinquent driver must not be allowed to receive a windfall at the expense of the purchasers of insurance, transferring his responsibility for punitive damages to the very people—the driving public—to whom he is a menace.”

Indubitably, it was considerations of this sort which impelled Senator Jack Davies to include in his proposed Minnesota no-fault auto insurance a section providing: “A person injured by the grossly negligent driving of another may recover punitive damages from the grossly negligent driver. No insurer may contract to indemnify for punitive damages awarded under this subdivision. A principal is not liable under this subdivision for the grossly negligent driving of his agent.” In a law review article (“The Minnesota Proposal for No-Fault Auto Insurance,” 54 Minnesota Law Review No. 5, p. 921) Senator Davies explained his reasons for making this proposal:

“This subdivision was conceived as I reflected upon the fallacious representations by foes of no-fault that the present system works as a fault liability system. The fact is that we have an insurance system. Typical of the repetitious assertions by opponents of no-fault is the following: ‘We believe that one who is injured through the carelessness of another should be compensated by the person who was responsible for causing the injury.’

“That statement is a misrepresentation of how the present system works. Less than three percent of those ‘responsible for causing the injury’ now pay anything to the injured person. Payment, if any, is made by insurance companies. If no-fault opponents really believe in a fault system where bad drivers pay victims, they should favor this bill over the present system. This subdivision allows the harmed to pursue the wrongdoer and to extract from the wrongdoer whatever flesh a jury will allow. But the jury will know the pursuer already has been reasonably compensated for his injuries and that in his action under this subdivision he seeks to punish. If punishment has a place in our compensation system, this bill provides for it. The present tort-liability insurance system does not.”

Although the concept of preserving to the wronged individual the right to recover punitive damages against which the wrongdoer may not insure himself has considerable attraction, it would appear that rather than permit the wronged person to effect redundant recovery, the tort-fine system might be so employed as to direct the proceeds from punitive damage recoveries toward public purposes, perhaps highway safety, to the extent that such recoveries exceed the costs of litigation, including reasonable attorneys’ fees.

Item 3. In view of the fact that no-fault reform, as contemplated in the Concurrent Resolution, would be effected by the States themselves, judicial implementation of such systems would be primarily by the State courts. Thus, further changes in the Federal judicial code or the Federal rules of civil procedure are not presently foreseen.

Under a no-fault, first-party automobile insurance system, the insured accident victim might well be in a position to proceed against the insurer in the Federal courts where the requisite diversity of citizenship existed and the amount in controversy was sufficient to confer jurisdiction upon the Federal courts. On the whole, however, it seems likely that under State legislated no-fault auto accident reparations systems, the number of diversity cases arising out of automobile accidents would be less than those reaching the Federal courts under the present tort-liability insurance auto accident reparations systems.

Item 4. It will be recalled that the Automobile Insurance and Compensation Study commissioned three eminent constitutional law scholars to engage in research and report on constitutional problems which might be involved in the interface of no-fault automobile reparations systems with the Federal Constitution. In the individual papers comprising the research report, *Constitutional Problems in Automobile Accident Compensation Reform*, Dean Lindsey Cowan of the University of Georgia Law School and Professor Joseph W. Bishop, Jr., of Yale University Law School addressed themselves to the question whether State enacted no-fault systems would conflict with the Federal Constitution while Professor C. Dallas Sands of the University of Alabama Law School dealt with

the constitutional law issues that might be involved incident to reform of the reparations system through Federal legislation.

As a result of his study, Dean Cowan concluded: "... [O]n the basis of such information as is available, it seems reasonable to predict that for the foreseeable future at least, the United States Supreme Court will hold that the 'no-fault' plans for the allocation of the costs of automobile accidents do not violate the due process and equal protection clauses of the Fourteenth Amendment." Similarly, Professor Bishop has written: "... I am of the opinion that a State statute enacting the Basic Protection [Keeton-O'Connell Plan] or some variant thereof would not contravene the Constitution of the United States."

Of due process questions, Professor Sands has written:

"Unless one is to assume that the common law is constitutionally immune from change, it is hard to take seriously questions that might be raised under the rubric of substantive due process on grounds of unreasonableness of legislation to reform the automobile accident loss compensation system . . .

"Although the principle of equality surely applies with no less force, nor differently, to federal than to state action despite the absence of an equal protection clause from the Bill of Rights, there is no greater substance to the argument that equal protection is violated by treating amounts of economic loss over a certain amount differently than claims for other kinds of losses, as the Keeton-O'Connell plan does, since reasonable leeway for legislative classification has been so clearly acknowledged by now. Indeed, the present tort system arguably results in a greater denial of equal protection by overcompensating small claimants and undercompensating large claimants, than would the proposals for reform. One of the purposes of such proposals is precisely to achieve greater proximity to equality of treatment among all victims of automobile accident."

Senator HART. I repeat again, the verdict as I have had my chairman announce it on my part is based on hearings for me that began in 1967. I get even more dug in as I listen.

Senator BAKER. Will the Senator yield?

I understand that and I understand the enthusiasm with which he approaches this subject, but my overall caution is that the advocates of no-fault or the opponents of it neither become so inflexible and dogmatic in the pursuit of their objective that we lose sight of the fact that there is good and bad in both concepts.

Senator HART. Well, perfection is not to be found in the products of man's hand. I accept that principle. But after you establish that, you then get into the area of degree and I publicly plead guilty in concluding that there isn't very much argument as to the degree, and I read the Secretary's report as an agreement with that conclusion. I am not talking about the testimony, I am talking about the report.

The Senator from Indiana?

Senator HARTKE. Well, I don't know who is at fault for that. Let me ask you, is the administration committed to a first-party, no-fault system?

Secretary VOLPE. Yes.

Senator HARTKE. Is it committed to it as a matter of national policy.

Secretary VOLPE. Insofar as we have related it here to action by the States and not a Federal statute, yes.

Senator HARTKE. But you do not believe that the Federal Government should act in this field and preserve the field now. That is what you are saying, is that right?

Secretary VOLPE. Yes.

Senator HARTKE. Would the administration veto such a bill if it were passed?

Secretary VOLPE. I don't know.

Senator HARTKE. I have to admit, whether you are for no-fault or opposed to it, I cannot understand how you can be committed to a

policy on a national level and be against it at the same time. I have to admit that baffles me. I know the hour is late and I don't think anything is going to be solved by asking any further question about it, but I honestly say that this approach in my way is no way to run a railroad or legislation.

I will let it go at that.

The CHAIRMAN. Any further questions?

We thank you, Mr. Secretary, and again I want to express for the committee our deep appreciation to your staff for this very complex job. We are very pleased with it.

Secretary VOLPE. Thank you.

(The questions of Senator Hart and Secretary Volpe's answers follow.)

U. S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C., March 26, 1971.

HON. JOHN A. VOLPE,  
Secretary, Department of Transportation,  
Washington, D.C.

DEAR MR. SECRETARY: In order to complete the record made when you appeared before the Senate Commerce Committee on March 18, 1971, we would appreciate your furnishing for the record responses to the following:

In your testimony you state that "every owner of a motor vehicle should be required to carry insurance . . ." Yet, nowhere in your prepared statement or oral testimony did you mention the very serious problem of auto insurance cancellations and nonrenewals.

What is the Administration's position in this regard?

Are we going to "require" car owners to carry insurance, and still leave insurance companies free to write some and not others as they see fit?

Mr. Colston Warne, President of Consumers Union, who is also chairman of your Auto Compensation Study's Consumer Advisory Committee, believes that 14 objectives should be met by any auto insurance reform plan. One such objective is: A standardized driver-rating system with premium rates figured in a way that would enable easy price comparisons, including comparison of the relative claim-paying practices of each company.

What is the Administration's position on this?

In your statement do we understand you to say that auto insurance coverages for medical and rehabilitation expenses should be "primary as among private systems"?

Why should these coverages be "required" as the "primary" source of indemnity for auto accident injuries?

What is the Administration's position with respect to auto insurance being primary as among public systems, such as Social Security and proposed National Health Insurance?

If auto insurance is to be primary as among private or public systems, doesn't that mean that consumers will continue to pay (either in premiums or taxes) for the same kind of duplicate coverage for which they are now paying?

If auto insurance is to be the primary source of recovery, how does the Administration propose to coordinate the premiums and taxes the car owner pays out to the numerous private and public systems covering the same expenses?

You also state that, "payment of benefits by a carrier under their (medical and rehabilitation) coverage should automatically remove the obligation of any other insurance carrier to pay benefits to the extent that the costs are covered by automobile insurance," how does the Administration propose to assure that consumers will realize lower premium rates from the "other insurance carrier" whose obligation to pay benefits would be automatically removed?

As the Administration suggests in the proposed Concurrent Resolution, assume that Congress decides to wait an additional 25 months to see how reform is proceeding at the state level. Is it to be inferred from your testimony and Report that the Administration will not accept reform which is anything less than a state law which provides no-fault coverage for all medical, hospital and rehabilitation expenses, all lost wages up to a limit of \$1,000 a month for 36 months,

and all lost service benefits up to a limit of \$75 per week for approximately 36 months?

In your testimony you say "there are 21 states in which bills have been introduced in one or another calling for some type of no-fault insurance."

Please describe briefly the medical, hospital, rehabilitation, lost wages and service benefits provided in the so-called no-fault bills proposed in each of these 21 states.

In which states do the introduced bills meet the uniform no-fault state law, which is described in the Administration's proposed Concurrent Resolution?

In which states do the introduced bills fail to meet your recommendations in such Resolution?

In your opinion, how do the so-called no-fault plans being sponsored by the Defense Research Institute, Independent Agents Association, and National Association of Independent Insurers in New Jersey, Pennsylvania, Michigan and other states meet the no-fault coverage recommendations described in your prepared statement, testimony, Report and proposed Concurrent Resolution?

You also state that "The problems are quite different in New York and Massachusetts, than they might be in Wyoming or Idaho."

To what "problems" are you referring?

The study, Automobile Personal Injury Claims, done for your Department by 16 of the leading auto insurance writers, states as follows:

*"Although the claims in this study were limited to those arising from accidents in the 19 states sampled, residents of every one of the 50 states and the District of Columbia were represented among the claimants—striking evidence of the interstate nature of the automobile accident compensation problem. Implementation of change in the compensation system must contend with this pervasive characteristic of car crashes. Further complicating the achievement of significant change on a state-by-state basis is the fact that the accidents in these 19 states involved insured vehicles registered in every state except Hawaii."*

Do you agree that the automobile accident compensation problem is interstate in nature?

Would you please explain exactly what you mean by the following statement:

*"... the inherent 'fairness' of using loss exposure as a major factor in pricing insurance to the individual."*

In the study, Causation, Culpability and Deterrence in Highway Crashes, published by your Department in 1970, the following source is referred to:

*"Klein, D. A critique of Lawton's 'Psychological Aspects of the Fault System,' U.S. Department of Transportation, 1970."*

As we have never received copies of this study, would you please furnish us with some as soon as possible?

During the hearing, as the Administration spokesman, you indicated that reform should be sought on the state level. Despite our difference of opinion on this particular issue, I wish to commend you and your staff for the excellent job that you have done with respect to this study.

Sincerely,

PHILIP A. HART,  
Chairman,  
Antitrust and Monopoly Subcommittee.

---

OFFICE OF THE SECRETARY OF TRANSPORTATION,  
Washington, D.C., June 18, 1971.

HON. PHILIP A. HART,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR HART: Secretary Volpe has asked me to reply to your request for responses to certain additional questions for purposes of completing the Senate Commerce Committee's record of March 18, 1971. The questions and our responses follow:

*Question 1. In your testimony you state that "every owner of a motor vehicle should be required to carry insurance. . . ." Yet, nowhere in your prepared statement or oral testimony did you mention the very serious problem of auto insurance cancellations and nonrenewals.*

*What is the Administration's position in this regard?*

*Are we going to "require" car owners to carry insurance, and still leave insurance companies free to write some and not others as they see fit?*

Response 1. With respect to cancellations and nonrenewals, several of the Insurance Study's published research reports, including the one prepared by the Federal Trade Commission, *Insurance Accessibility for the Hard-to-Place Driver*, examine the existing problems of cancellation and nonrenewal under the present insured tort liability system. A shift from a third-party fault to a first-party no-fault system should markedly change the nature of the residual market. Availability of coverage should, in general, improve because total loss exposure can be more accurately predicted. Ability-to-pay problems should also be reduced because loss exposure will become significantly dependent upon the insured's own loss potential characteristics, including his income level. Thus, the present problems of cancellation and nonrenewal should be substantially reduced when the States enact legislation encompassing the Department of Transportation's recommendations.

The States, themselves, have been quite active in attempts to deal with current residual market problems. Under the more favorable underwriting climate expected to be provided by a first-party, no-fault reparations plan, the States should be able to provide adequate solutions to any remaining want of a voluntary market.

The question of leaving some companies free to write policies for some applicants and not others is an important one. A first-party automobile insurance system for the reparation of automobile accident victims would have to be compulsory, it is generally agreed, not only because of the interests of others, such as pedestrians and otherwise uninsured occupants of vehicles, but also because there are some (fortunately, only a very few) who are so completely irresponsible as to be oblivious of the need for their own protection and that of their families. To that extent, therefore, car owners would be "required" to carry insurance.

However, because the principal and direct beneficiaries of the insurance would be the motorists themselves and their families, it is difficult to believe that the same type and degree of compulsion would be required under a first-party system as is now required under the third-party, liability insurance reparations system.

Similarly, it is difficult to believe that the same type of underwriting restrictions as those now widely prevalent under the tort reparations system would be characteristic under the first-party system. Under the liability insurance system, the underwriter has no way of knowing whether a possible accident victim, to be compensated under the policy, will be one whose modest income and low standard of living militate against great dollar loss or whether such victim will be one whose economic status will entail great loss incident to his injury and disablement. Given a first-party system, however, the underwriter will be in a better position to determine more precisely the probable range of loss in the event of accident simply because he will have information regarding the economic status of the insured and his family. Moreover, since the ability or inability of the insurer successfully to defend the insured in a tort suit will determine neither the fact nor the extent of the insurer's liability, the defendability of the insured should not assume a paramount, if any, role in determining the acceptability or retention of an individual risk or of any class or group of risks.

Under these circumstances, one would expect that those risks which have been most suspect and, therefore, most shunned under the third-party system (such as, for example, youthful drivers, the elderly, and ghetto dwellers) should find decidedly improved acceptance under a first-party system, from which it should follow that the underwriting and market problems referable to a first-party system will differ from those which have typified the third-party system and will demand different solutions.

There is little reason to believe that the accident prone, the abuser of alcohol and the irresponsible driver will not experience difficulty in obtaining or retaining coverage under a first-party system, but there is every reason to believe that motorists whose own records are unmarred by accidents or violations will not be consigned to assigned risk plans without cause. It is readily apparent that an assigned risk plan appropriate to the first-mentioned types of risk will, and should, differ markedly from an assigned risk plan necessitated by the inability of large numbers of the second type of risk to procure insurance in the voluntary market.

Clearly, assigned risk plans affording coverage to those in good faith entitled to, but unable to obtain, insurance should be as universal under a first-party system as they are now under the liability system, but such plans should relate to the conditions presented by the new system rather than to the conditions which characterized the old. Similarly, if restrictions and limitations upon cancellation or nonrenewal are required under the new, first-party system, they should be relevant to, and necessitated by, the new system rather than represent solutions to problems rendered obsolete by the inauguration of the new reparations system.

*Question 2. Mr. Colston Warne, President of Consumers Union, who is also chairman of your Auto Compensation Study's Consumer Advisory Committee, believes that 14 objectives should be met by any auto insurance reform plan. One such objective is: A standardized driver-rating system with premium rates figured in a way that would enable easy price comparisons, including comparison of the relative claim-paying practices of each company.*

*What is the Administration's position on this?*

Response 2. Beyond doubt, a standardized driver-rating system, such as that visualized by Mr. Colston Warne, with premium rates figured in such fashion as to enable the insurance buyer easily to make price comparisons, represents an entirely worthy objective for any auto insurance reform plan. Inclusion in such a system of means for enabling the insurance purchaser to compare and evaluate the relative claim-paying practices of each insurer is no less worthy and desirable an objective. It is not improbable that attainment of the latter objective might require either standardization of policy provisions or creation of some means for enabling the lay insured to measure and evaluate variations in policy language upon which differences in claim-paying practices may be predicated. In any event, States should carefully consider the desirability and feasibility of including such features in any auto accident reparations reform they adopt.

*Question 3. In your statement do we understand you to say that auto insurance coverages for medical and rehabilitation expenses should be "primary as among private systems"?*

*Why should these coverages be "required" as the "primary" source of indemnity for auto accident injuries?*

*What is the Administration's position with respect to auto insurance being primary as among public systems, such as Social Security and proposed National Health Insurance?*

*If auto insurance is to be primary as among private or public systems, doesn't that mean that consumers will continue to pay (either in premiums or taxes) for the same kind of duplicate coverage for which they are now paying?*

*If auto insurance is to be the primary source of recovery, how does the Administration propose to coordinate the premiums and taxes the car owner pays out to the numerous private and public systems covering the same expenses?*

*If, as you say at page 13 of the transcript, "payment of benefits by a carrier under their (medical and rehabilitation) coverage should automatically remove the obligation of any other insurance carrier to pay benefits to the extent that the costs are covered by automobile insurance," how does the Administration propose to assure that consumers will realize lower premium rates from the "other insurance carrier" whose obligation to pay benefits would be automatically removed?*

Response 3: There appears to be virtual unanimity of opinion that any first-party auto accident reparations system must be predicated upon compulsory insurance. To that extent, then, the auto medical and rehabilitation expense coverage would be "required."

The Department's report, "Motor Vehicle Crash Losses and Their Compensation in the United States," attempts to make clear the belief that a wide range of deductibles should be made available to the insured to the end that he might mesh his automobile insurance program with his other insurance and benefit programs and pay the reduced auto insurance premium appropriate to the deductible selected by him.

It would seem to be clear that the insurer with knowledge that the first \$100, \$250 or \$1,000 of loss will not be covered will be in a position to adjust the premium rate downward with some precision just as the collision or homeowners insurer accords its insured a lesser rate commensurate with the deductible chosen by him. This approach has the considerable virtue of affording the insured

premium savings on an anticipatory basis based upon the impact of his risk upon the expected loss experience.

The alternative would be to require all automobile policies to provide that the coverage would constitute only excess insurance over other health insurance, Blue Cross or other benefit programs.

Even if one were to overlook the considerable, if not prohibitive, administrative expense incident to rating each automobile risk individually and conferring upon each risk a rate appropriate to the other coverage then possessed by the insured which would constitute a primary coverage in the event of loss, it would appear to be necessary to condition the coverage of that policy upon the continued existence of the other insurance on which the rate was predicated. Thus, if the insured's personal situation were to change, as, for example, where he changed jobs and no longer enjoyed the group accident and health coverage which he formerly had available to him, he might find himself without any coverage because of a warranty in his policy regarding the existence of other coverages. Again, other insurers, such as accident and health insurers, or other providers of benefits, might well alter their coverages so as to delete benefits for loss arising out of auto accidents, or make their coverages excess so as to place the insured in the impossible position of having two or more benefit sources each of which purports to be excess with each provider of benefits declining to respond until the other has paid its benefits; an unfortunately familiar situation when conflicting excess clauses are involved in connection with an insurance loss.

If first-party auto insurance policies are not individually rated so as to credit the insured's premium with the other, primary, insurance available to him, then, the only rate relief which can come to auto policyholders by reason of making benefits provided by health insurance of plans primary must come through the lowering of the general rate level by reason of the impact of other insurance upon the general loss experience. However, any such lowering of the general rate level will necessarily inure as much to the benefit of those who are without other coverage, and who will, consequently, receive full reparation from the auto insurance system, as to the benefit of those who receive, and pay for, protection from other benefit sources. In short, auto policyholders with other health coverage would subsidize those without other coverage to a significant extent.

It must never be forgotten that insurance rates are addressed to the future and that past loss experience is relevant only to the extent that future experience can be expected to duplicate the past experience. The auto insurance actuary peering into the future for the purpose of structuring his rates can be expected to view pessimistically the likelihood that future auto losses will be softened to the same or greater extent by the presence of other insurance as in the past, particularly when it lies within the power of other insurers or providers of benefits to terminate the relevancy of their coverage by excluding auto accidents from its scope or by rendering such coverage excess insurance.

Moreover, if the only rate benefit arising out of constituting other insurance as the primary coverage lies in reducing the general rate level because of the impact of the other insurance on the common loss experience, we are concerned that a new breed of preferred risk underwriters may arise vying only for those risks most likely to enjoy the other coverages which will be primary in the event of loss and thus most calculated to yield the greatest profit under a rate level determined by risks without other insurance as well as risks having other coverage. Warranties in policies, policy conditions entailing forfeiture incident to breach, and other coverage devices could be confidently expected to follow in the wake of such preferred risk underwriting. Should such conditions eventuate, we shall have but substituted one form of "skimming the cream" for another and one class of residual or substandard risk for another.

In sum, the better approach would seem to be to allow the insured to maximize the premium benefit to himself resulting from other coverage which he may have or arising out of his willingness and ability to absorb small losses is to make available to the insured a full range and variety of deductibles to the end that the lay insured may, with full cognizance of what he is doing, realize directly and immediately the premium savings justified and demanded by the other coverage which he possesses. Although from a public policy perspective any duplication of benefits is clearly undesirable and the widest coordination of benefits is a sound goal, premiums, as well as benefits, should be "coordinated." The safest and surest way to accomplish this would appear to lie in providing a wide variety of optional deductibles.

With respect to public systems such as Social Security or proposed National Health Insurance, several factors must be considered in deciding which insurance should provide primary coverage including: (1) the possibility of leaving some individuals uninsured or creating coverage gaps; (2) the confidence with which the secondary insurer can predict whether primary insurance will be available when the accident occurs; and (3) the administrative cost effectiveness of the primary insurance.

Social Security should be primary over automobile insurance because it is compulsory for most eligible employees; therefore, there will be no unintended gaps in coverages. Automobile insurers can be confident because Social Security is compulsory, that the primary coverage will be available at the time of the accident; they will be able to base their rates on this fact; and Social Security has a better cost benefit ratio than automobile insurance.

The question of primacy of coverage with respect to "national health insurance" and automobile insurance is, at present, moot and should probably remain so until several questions are resolved, including: (1) to what extent will either type of insurance be compulsory; (2) will "national health insurance" be a government-mandated private health insurance or will it be a wholly governmental system; (3) which system will provide the more comprehensive benefits; and (4) which promises to be the most efficient? Since the answers to these questions cannot be determined at this time, the Department of Transportation recommends making automobile insurance first-party, no-fault, mandatory and primary to all other private insurance schemes.

*Question 4. As the Administration suggests in the proposed Concurrent Resolution, assume that Congress decides to wait an additional 25 months to see how reform is proceeding at the state level. Is it to be inferred from your testimony and Report that the Administration will not accept reform which is anything less than a state law which provides no-fault coverage for all medical, hospital and rehabilitation expenses, all lost wages up to a limit of \$1,000 a month for 36 months, and all lost service benefits up to a limit of \$75 per week for approximately 36 months?*

Response 4. One page 133 of the Department's final report, "Motor Vehicle Crash Losses and Their Compensation in the United States" in reference to the "Specific Recommendations" alluded to in the foregoing question, the following was noted:

"It should be emphasized that the policy limits and deductibles used in the following description are *basically illustrative*, although the Department of Transportation's study would indicate that they are roughly in the right order of magnitude."

The thrust of the Administration's position is that the States should be given significant flexibility in designing their own reform plans, with any final judgment as to their adequacy or relative effectiveness deferred until they have been tested in practice.

*Question 5. In your testimony you say "there are 21 states in which bills have been introduced calling for some type of no-fault insurance."*

*Please describe briefly the medical, hospital, rehabilitation, lost wages and service benefits provided in the so-called no-fault bills proposed in each of these 21 states.*

*In which states do the introduced bills meet the uniform no-fault state law, which is described in the Administration's proposed Concurrent Resolution?*

*In which states do the introduced bills fail to meet your recommendations in such Resolution?*

*In your opinion, how do the so-called no-fault plans being sponsored by the Defense Research Institute, Independent Agents Association, and National Association of Independent Insurers in New Jersey, Pennsylvania, Michigan and other states meet the no-fault coverage recommendations described in your prepared statement, testimony, Report and proposed Concurrent Resolution?*

Response 5. There is attached (Attachment A) a table which compares in summary fashion the principal features of the Department's recommendations for reform of the auto accident reparations system with the various reform plans before the several States legislatures this year.

Obviously, none of the various state plans are identical to the "illustrative plan" in the Department's Report. Many of these reform proposals would accomplish in part, some almost entirely, the basic goals implied in the "principles" advanced in the Report. The "Davies" bill in Minnesota is a good example of the latter.

Many of the bills, e.g. those which introduce compulsory first-party benefits (albeit usually at limits too low to insure adequate reparations for the seriously or fatally injured victims) but which retain subrogation, can be viewed as useful intermediate steps in an evolutionary reform process to the goal of a total first-party, no-fault system. The fact that these first or intermediate steps do not accomplish all desired reforms, should not be used as an argument against taking them at all.

The "so-called no-fault plans being sponsored by the Defense Research Institute, Independent Agents Association, and the National Association of Independent Insurers" are, of course, not "no-fault" plans, but rather combination first-party/tort plans, and obviously do not meet the no-fault coverage recommendations described in the Department's Report or the proposed Concurrent Resolution.

*Question 6. In your testimony you say, "The problems are quite different in New York and Massachusetts, than they might be in Wyoming or Idaho."*

*To what "problems" are you referring?*

Response 6. I would probably have been more accurate to say that "The Auto insurance needs of residents are quite different in New York and Massachusetts than they might be in Wyoming or Idaho." Thus the higher accident frequency found in the more densely populated states is certain to make insurance there relatively more expensive. In setting minimum standards for their own citizens as to mandatory insurance coverage, under a first-party no-fault system, individual states should have the prerogative of reflecting this difference.

*Question 7. The study, Automobile Personal Injury Claims, done for your Department by 16 of the leading auto insurance writers, states as follows on pages 10 and 11:*

*"Although the claims in this study were limited to those arising from accidents in the 19 states sampled, residents of every one of the 50 states and the District of Columbia were represented among the claimants—striking evidence of the interstate nature of the automobile accident compensation problem. Implementation of change in the compensation system must contend with this pervasive characteristic of car crashes. Further complicating the achievement of significant change on a state-by-state basis is the fact that the accidents in these 19 states involved insured vehicles registered in every state except Hawaii."*

*Do you agree that the automobile accident compensation problem is interstate in nature?*

Response 7. Yes, the automobile accident compensation problem is interstate in nature.

*Question 8. Would you please explain exactly what you mean by this statement: "... the inherent 'fairness' of using loss exposure as a major factor in pricing insurance to the individual."*

Response 8. The existing automobile liability insurance driver classification plans are justified on the grounds that they achieve substantial equity or fairness between various groups of drivers distinguished by the fact that they share certain "objective" characteristics. Thus, for example, drivers are classified according to age because experience has shown that the accident loss frequency and severity associated with young insureds is on a liability basis significantly higher than for the driving population as a whole. Therefore, drivers under age 25 are charged premiums for their insurance to reflect the higher loss costs which they as a group incur for the system. Other differentiations on the basis of sex, car use, mileage, residence, driver training, etc. are similarly justified in the name of fairness.

But the liability insurance driver classification system as now constituted omits from its consideration the insured's own exposure, i.e., his loss potential (or the size of his potential claim on the insurance pool as an "innocent" accident victim). In other words, the classification system does not reflect difference in the value of the driver's car, his income, the size of his family and its needs in the event of his death, etc. The result is that *regardless of their likelihood to "cause" a crash*, low income drivers as a class subsidize high income drivers, drivers with economy cars subsidize those with limousines, single drivers with no dependents subsidize family men, younger and older drivers subsidize those of middle age, etc. A hypothetical illustration may help explain how this happens.

First, assume a car population of 200 vehicles, half of them Cadillacs and half of them Chevy IIs. Their owners all have the same "objective" classification

characteristics—age, driving habits and accident/violation record, territory, etc.; therefore, under the liability insurance classification plan, they all paid the same for liability insurance, in this case \$91 per year. All owners are equally likely to have accidents and to be “at fault” in them.

There are forty accidents during the year and, since according to our assumption all drivers are equally likely to be involved and be “at fault”, ten of the accidents involve only Cadillacs, ten only Chevy IIs and 20 Cadillacs and Chevy IIs. Every accident, in the hypothetical example, is the same, a sideswipe, in which one car crosses the median line and the left front fenders of both cars are damaged so that they will have to be replaced. Labor and parts for the Cadillacs are \$612, for the Chevy IIs \$298. In every case, the innocent driver recovers his full property damage loss from the other driver's liability insurer.

Thus, despite the fact that Cadillac owners and Chevy II owners are “guilty” or “innocent” in equal numbers, Cadillac owners, who pay \$91 each in premiums or \$9,100 as a class into the insurance pool, get a total of \$12,240 back in benefits; Chevy II owners, who also pay \$91 each or \$9,100 as a class, get back only \$5,960. Thus, it is clear that the “insured” liability system cannot be “fair” to these different classes of drivers because it cannot take account of their different loss exposure, i.e., the value of the property at risk, its susceptibility to damage or its cost to repair.

	Cadillac accidents only	Chevy II accidents only	Cadillac/ Chevy II accidents	Total
<b>Number of accidents:</b>				
Cadillacs at fault.....	10		10	20
Chevy II's at fault.....		10	10	20
<b>Total.....</b>	<b>10</b>	<b>10</b>	<b>20</b>	<b>40</b>
<b>Losses:</b>				
Cadillacs at fault.....	\$6,120		\$2,980	\$9,100
Chevy II's at fault.....		\$2,980	6,120	9,100
<b>Total.....</b>	<b>6,120</b>	<b>2,980</b>	<b>9,100</b>	<b>18,200</b>
<b>Benefits accruing to—</b>				
Cadillac owners.....	6,120		6,120	12,240
Chevy II owners.....		2,980	2,980	5,960
<b>Total.....</b>	<b>6,120</b>	<b>2,980</b>	<b>9,100</b>	<b>18,200</b>
<b>Premiums:</b>				
Cadillac owners.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	9,100
Chevy II owners.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	9,100
<b>Total.....</b>	<b>(<sup>1</sup>)</b>	<b>(<sup>1</sup>)</b>	<b>(<sup>1</sup>)</b>	<b>18,200</b>

<sup>1</sup> Not available.

Under the liability insurance system, owners of popular priced cars are subsidizing the owners of more expensive luxury cars. Moreover, the subsidy effect increases for car owners at the extremes of the car value spectrum, e.g., the owner of a ten-year old Chevy or a brand new Mercedes.

The subsidization of the affluent by the less affluent can be seen in the following example:

Again we must assume a driving population of 200 car owners. Half of them are blue collar workers earning \$175 per week; the other half are business executives earning \$500 per week. All have the same “objective” classification characteristics—age, driving habits, etc. Therefore, they all pay the same bodily injury liability insurance premium, in this case \$235 per year.

Again there are forty accidents, and assuming that blue collar workers and executives are equally likely to be accident involved and “at fault,” ten would involve blue collar workers only, ten executives only, and twenty executives and blue collar workers. In each accident, the respective drivers suffer the same injury involving the same medical/hospital loss and the same amount of work time lost, two weeks. Medical costs are \$500 for all, wage loss for blue collar workers is \$350 each and for executives \$1,000 each. Each innocent victim recovers his full loss from the other driver's liability insurance.

	Blue collar accidents only	Executive accidents only	Executive/ blue collar accidents	Total
<b>Number of accidents:</b>				
Blue collar at fault.....	10		10	20
Executive at fault.....		10	10	20
<b>Total.....</b>	<b>10</b>	<b>10</b>	<b>20</b>	<b>40</b>
<b>Losses:</b>				
Blue collar at fault.....	\$8,500		\$15,000	\$23,500
Executive at fault.....		\$15,000	8,500	23,500
<b>Total.....</b>	<b>8,500</b>	<b>15,000</b>	<b>23,500</b>	<b>47,000</b>
<b>Benefits accruing to:</b>				
Blue collar workers.....	8,500		8,500	17,000
Executives.....		15,000	15,000	30,000
<b>Total.....</b>	<b>8,500</b>	<b>15,000</b>	<b>23,500</b>	<b>47,000</b>
<b>Premiums:</b>				
Blue collar workers.....	(1)	(1)	(1)	23,500
Executives.....	(1)	(1)	(1)	23,500
<b>Total.....</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>	<b>47,00</b>

<sup>1</sup> Not available.

0

Again, despite the fact that blue collar workers and executives were "guilty" or "innocent" in equal numbers, the former who paid \$235 each in premiums, or \$23,500 as a "class," got a total of only \$17,000 back in benefits; however, the business executives who also paid \$235 each in premiums, or \$23,500 as a class, got a total of \$30,000 back in benefits. Again, the "insured" liability system can not produce equity between insureds of different income levels because it does not take account of their different loss exposure, i.e., the potential value of the insured's accident-caused income losses.

*Question 9. At page 144 of the study, Causation, Culpability and Deterrence in Highway Crashes, published by your Department in 1970, the following source is referred to:*

*"Klein, D. A. Critique of Lawton's 'Psychological Aspects of the Fault System,' U.S. Department of Transportation, 1970."*

*As we have never received copies of this study, would you please furnish us with some as soon as possible?*

**Response 9.** Copies of "A Critique of Lawton's 'Psychological Aspects of the Fault System'" by David Klein, U.S. Department of Transportation, 1970, are enclosed (Attachment B).

If I or my staff can be of any further assistance to you in this matter please let me know.

Sincerely,

CHARLES D. BAKER.

Enclosures.

ATTACHMENT A  
COMPARISON OF AUTO INSURANCE REFORM PLANS TO ILLUSTRATIVE DEPARTMENT OF TRANSPORTATION REFORM PRINCIPLES<sup>1</sup>

Plan type	Compulsory 1st-party, bodily injury benefits					Type of system	States in which bill has been introduced in legislature (limits and deductibles will vary)
	Medical	Income	Lost services	Other economic loss	Property damage		
DOT	Full medical coverage; deductibles permissible.	Up to \$1,000 per month for 36 months; deductibles permissible; broader coverage optional.	Up to \$75 per week for 36 months.		1st party, no fault basis.	All losses eligible for coverage by basic plan are exempt from tort recovery	1st party, no fault with residual tort liability.
AIA complete personal protection.	Full medical coverage.	\$750 per month; no time limit.	Reasonable payment for lost services.	Unlimited.	1st party, no fault.	Complete tort exemption.	Pure no fault.
Massachusetts "compulsory personal" protection.	1st party benefits to policy limits.	Up to 75 percent loss of wages and salary to policy limits.	Expenses reasonably incurred.	Maximum 1st party coverage for all economic loss \$2,000.	Not covered	Tort exemption against recovery of intangible damages in minor cases; subrogation is permitted between insurance companies for all payments.	Tort with compulsory 1st party benefits.
Cotter	Up to \$2,000 1st party medical.	Up to 52 weeks; \$500 per month maximum 1st party benefit.	Expenses reasonably incurred; \$12 per day reasonably incurred.		50 percent of 1st party medical expenses; 100 percent of medical expenses exceeding \$500.	No tort exemption but 1st party benefits deducted from 3d party settlement (insurance company subrogation).	Tort with compulsory 1st party benefits.

ATTACHMENT A—Continued  
COMPARISON OF AUTO INSURANCE REFORM PLANS TO ILLUSTRATIVE DEPARTMENT OF TRANSPORTATION REFORM PRINCIPLES—Continued

Compulsory 1st-party, bodily injury benefits					Property damage	Intangible loss	Tort exemption	Type of system	States in which bill has been introduced in legislature (limits and deductibles will vary)
Plan type	Medical	Income	Lost services	Other economic loss					
Davies.....	Full medical coverage.	75 percent of all wage loss up to \$750 per month.	Expenses reasonably incurred.	-----	Tort recovery except for motor vehicles which are under no fault.	Scheduled for loss of members and digits; maximum of \$25,000 for total disability; \$3,500 maximum for disfigurement.	Tort exemption for bodily injury except punitive damages for gross negligence (insurance against gross negligence prohibited); tort exemption for damage to motor vehicle.	1st party no fault with residual tort liability for punitive damages for gross negligence; property damage; auto insurance secondary.	Florida, Hawaii, Kansas, Minnesota.
Keeton-O'Connell <sup>2</sup> .....	Full medical coverage up to policy limits deductible permissible.	Full coverage to policy limits deductible permissible.	Expenses reasonably incurred.	Full coverage to policy limits deductibles permissible.	Dual option choice of (a) No fault coverage for motor vehicles, (b) 1st party liability coverage for motor vehicles tort liability applied to other property damage.	Tort exemption for 1st \$5,000 of pain and suffering.	Tort exemption for 1st \$5,000 of intangible loss and 1st \$10,000 of economic loss.	1st party no fault with residual tort liability auto insurance secondary.	Florida, Indiana, Michigan, Washington.
Insurance Company of North America. <sup>4</sup>	Full medical coverage to policy limits.	Full coverage to policy limits.	Expenses reasonably incurred.	-----	Tort liability applies.	Tort liability applies.	None. Claimant cannot recover damages paid under 1st party coverage. (Insurers have subrogation rights for these damages.)	Tort with compulsory 1st party benefits. Auto insurance primary.	Delaware (passed), Colorado.

Hart.....	Full medical coverage.	85 percent of monthly earnings to a maximum of \$1,000 a month for 36 months.	Expenses reasonably incurred.	Tort liability applies.	Tort exemption except for cases involving catastrophic harm (death, total disability or permanent or partial disability of 70 percent or more). No recovery unless pain and suffering exceeds \$1,000 and medical and hospital expenses exceed \$2,000.	1st party no fault with residual tort liability.
New Mexico HB 135 (Puerto Rico Plan).	Full medical coverage.			Tort liability applies.	Tort exemption for \$1,000 pain and suffering and \$2,000 of medical and hospital expenses.	State fund 1st party no fault with residual tort liability.
Pennsylvania HB 37 <sup>1</sup> .						
Study bills <sup>2</sup> .						
Combination tort—1st party systems.	Provide medical coverage up to policy limits.	Provide percent of income loss up to policy limits.	Expenses reasonably incurred.	Tort law applies.	Tort law applies: some plans exclude intangible loss for minor claims.	Combination tort—1st party system.
New York State Insurance Department plan.	Full medical coverage.	Unlimited net income loss compensation.	Expenses reasonably incurred.	1st party no-fault basis.	No coverage.	1st party no fault.

Hawaii, Kansas, Michigan, Minnesota, Montana, New Jersey, New Mexico, North Dakota, Oregon, Pennsylvania, Texas, Washington, West Virginia, California AB 117; Hawaii (SB 713); HB 800; Oregon HB 1300; New York SB 4400; Illinois SB 263.

<sup>1</sup> It should be understood that any summary comparison like this of detailed bills concerning a subject as complicated as auto accident reparations simply cannot do justice to the special features of individual plans. In addition, this summary was compiled from incomplete information about some of the plans and should not be considered authoritative.

<sup>2</sup> See attached list for bill numbers.

<sup>3</sup> Maximum no-fault benefits \$10,000.

<sup>4</sup> Required 1st party coverage of \$10,000/20,000 deductible, waiting period etc. permitted.

<sup>5</sup> Constitutional amendment authorizing legislature to enact no-fault laws.

<sup>6</sup> Legislation would create commission to study automobile insurance reform, in most States; bill is intended to defer action on other no-fault legislation.

**AIA Complete Personal Protection Plan:**

Alaska—H.B. 25	Montana—H.B. 451
California—S.B. 515	Nevada—S.B. 301
Connecticut—S.B. 702	New York—S.B. 5792
Delaware—H.B. 90	Oklahoma—H.B. 1270
Florida—H.B. 65	Oregon—H.B. 1851
Hawaii—S.B. 1279	West Virginia—H.B. 1209

**Massachusetts—Compulsory Personal Protection:**

Arizona—H.B. 316	Maryland—H.B. 151
California—H.B. 1030	Rhode Island—H.B. 1470
Connecticut—S.B. 571	Wisconsin—H.B. 373

**Cotter:**

Arizona—H.B. 217	Minnesota—H.B. 1737
Connecticut—S.B. 1048	New Mexico—S.B. 224
Florida—H.B. 695	West Virginia—S.B. 423
Indiana—S.B. 640	

**Davies:**

Florida—H.B. 322	Kansas—H.B. 1356
Hawaii—H.B. 181	Minnesota—S.B. 568 H.B. 724

**Keeton-O'Connell:**

Florida—H.B. 168	Michigan—S.B. 4
Indiana—H.B. 1416	Washington—S.B. 654

**Insurance Company of North America:**

Colorado—H.B. 1221	Delaware—H.B. 270 (passed)
--------------------	----------------------------

**Study Bills:**

Hawaii—H.C.R. 93	North Dakota—S.C.R. 4028, S.C.R. 4029
Kansas—H.C.R. 1037	Oregon—S.J.R. 19
Michigan—S.R. 45	Pennsylvania—H.R. 34
Minnesota—H.B. 2740	Texas—H.C.R. 110
Montana—H.J.R. 29	Washington—H.B. 696
New Jersey—H.B. 829	West Virginia—S.C.R. 15
New Mexico—H.J.M. 13	

**Combination Tort—1st Party Systems:**

California—A.B. 117	New York—S.B. 4400
Hawaii—S.B. 713, H.B. 800	Illinois—S.B. 263
Oregon—H.B. 1300	

**ATTACHMENT B****A CRITICAL ANALYSIS OF LAWRENCE LAWTON'S "PSYCHOLOGICAL ASPECTS OF THE FAULT SYSTEM AS COMPARED WITH THE NO-FAULT SYSTEM OF AUTOMOBILE INSURANCE"**

(By David Klein, Professor of Social Science and Human Development, Michigan State University, East Lansing, Mich.)

**INTRODUCTION**

The exponential growth of scientific knowledge, the increasing complexity of the technology, and the rapid proliferation of special-interest groups have combined to make the task of the legislator or the policy-maker exceedingly difficult. Determined though he may be to base his decisions on scientific evidence rather than on the persuasive rhetoric or the political pressures emanating from colleagues, constituents, or special interests, he finds it increasingly difficult to identify and evaluate such evidence and to assemble it into a solid foundation for policy. The problem is, of course, that no human being today can assimilate the facts and the expertise in the numerous disciplines and areas of special knowledge involved in many, if not most, policy decisions.

A common solution to this widely recognized problem is the enlistment of professionals and specialists of various kinds, not merely to staff operating agencies and to implement policy but also to advise legislators and policy-makers—through informal consultation, through the preparation of position papers, through testimony at formal hearings—as to the types of enabling legislation that are socially desirable and scientifically justified.

The use of professionals as consultants, however, raises several perplexing questions. The most obvious of these—Does the professional represent a special interest or does he present all the facts in order to provide a balanced view?—may or may not be the most important one. At least equally important is the question: Which disciplines and what kinds of evidence are relevant to a specific public issue? Should the professionals called upon for advice on the legal regulation of smoking, for example, represent such fields as thoracic surgery and biostatistics, or may social psychologists, obstetricians, and anthropologists have important data to contribute? Since it is the legislators and policy-makers who determine the disciplines to be called upon for consultation, it is possible that the advice they receive will be no broader than their initial view of the problem's dimensions.

Another question centers on whether the professional who spends time in a consultant capacity spends time also at the "growing edge" of research in his own discipline. "Keeping up with the literature" is, unfortunately, no longer an adequate way of keeping up with one's field, because today the professional literature serves to document priorities in discovery rather than to communicate the discoveries themselves. Scientific breakthroughs today become known months before they are published in the journals. There is always the danger, therefore, that the consulting professional may offer his clients the conventional wisdom of his discipline rather than the latest findings that modify it or render it obsolete.

Lastly, how is the legislator to reach a decision when two professionals, with apparently equally adequate credentials, reach diametrically opposed conclusions? Often enough the open-minded legislator is strongly persuaded toward a course of action by the first professional testimony he hears—only to be thrown into confusion by the contradictory testimony that he hears subsequently. And since the legislator is not himself a professional in a specialized discipline, how can he act as judge between two consultants who are, in fact, professionals?

Perhaps this problem—as well as some of the others mentioned above—can be alleviated if conflicting or contradictory professional testimony were presented not seriatim, as is generally the case in hearings, but in an adversary format, as is generally the case in legal proceedings. This format, in which two professionals confront one another directly, tends to cast the reader into the role of juror: he is expected to judge the reasonableness of the argument rather than the validity of the substance—a far more appropriate role for the layman whose responsibilities force him to deal with subject matter in which he has no extensive training.

In the following pages, therefore, we present a position paper sponsored by the Defense Research Institute in support of the present "fault" system of insurance. We interrupt this paper at numerous points for the presentation of adversary arguments which question the paper on both substantive and methodological grounds.

The weaknesses and errors in this document are so numerous and so serious as to render the conclusions untenable on the basis of either the evidence or the logic presented in the document itself. Because the weaknesses occur on several levels, they will be documented and discussed on several levels in subsequent sections of this review. They can, however, be summed up briefly in the following generalizations.

The author occasionally cites sound studies but draws from them conclusions and inferences that are entirely unwarranted; indeed, many of the studies can more logically be used to support a position opposite to the one supported in this document.

The author often seems unable to distinguish between sound research data and speculation based on impressionistic or hypothetical description.

The author frequently cites administrative data without an awareness of their biases, limitations, and other inadequacies.

U.C. BERKELEY LIBRARY

The author attributes to the "no fault" system characteristics which are not inherent in it; he then proceeds to draw inferences (often unwarranted) on the basis of these attributed characteristics.

The author shows an inadequate understanding of the nature of social norms, the process of conformity to norms, and conflict among norms; this leads him to inferences which he could not make if his understanding were adequate.

The author misinterprets many of the social-psychological experiments that he cites, and this misinterpretation leads to scientifically unacceptable conclusions.

Despite his numerous references to social and psychological data, the author ignores basic psychological and socioeconomic factors that affect both driving behavior and responsiveness to deterrent measures.

These general weaknesses lead the author into major and minor errors, all of which will be discussed below. Absolutely fundamental to his conclusions, however, are his assumption that vehicular negligence is a target of "community abhorrence" and his use of a mathematical model to demonstrate deterrent potentialities of the "fault" system. These two points, therefore, need to be reviewed first, and in considerable detail.

#### NORMS AND THEIR OBSERVANCES: IS "COMMUNITY ABHORRENCE OF THE NEGLIGENT DRIVER" A STRONGLY HELD NORM?

In its popular, everyday usage, the term *norm* has lost most of the precision that it retains in its technical usage in anthropology and sociology. But if the concept of *norms* is to be used in the construction of a closely reasoned argument (as it is in the paper under discussion), it must be used in its precise, technical sense. Unfortunately, however, the author demonstrates considerable confusion both as to the meaning of the term and as to the nature of compliance with norms. At one point (*see* p. 31) he implies that a current norm can be derived from a four-year-old survey of public opinion regarding *causation* of a phenomenon about which the respondents had no technical understanding; elsewhere he equates the norms with the statutory laws; and nowhere does he distinguish between stated (or ideal) norms and behavioral (or statistical) norms. Indeed, if the author were to use the term *norm* in its scientifically acceptable sense, his conclusion that "community abhorrence of the negligent driver" is a strongly held norm would become completely untenable.

Simply defined, a norm is a *mode of behavior* that the dominant segment of a society values, approves, or encourages. The strength of a norm at any point in time is measurable not by what the members of a society *say* or *legislate* (although these *stated* norms provide interesting information about the society's value system) but by how they *behave* and permit others to *behave*. This behavior includes not only the frequency with which the members violate the norms but also the measures they employ to prevent violation, the laws they make, the enforcement of these laws, the punishment and other negative sanctions meted out to violators, the resources devoted to prevent or discourage violations, etc.

For a number of reasons there is often substantial discrepancy between the statutory laws and the current norms. Some laws (against witchcraft or fornication, for example) reflect norms which changing social values have rendered obsolete or obsolescent; such laws may remain on the books, but they are rarely enforced. Other laws (e.g., Prohibition), created by pressure groups or by a particular set of social or economic circumstances, are widely violated by substantial segments of the noncriminal public. Still other laws (e.g., on school desegregation) are flagrantly violated because, although they reflect the ideal norms, they conflict sharply with the behavioral norms. Sometimes the technology and the value system change so substantially as to require modification of the laws (e.g., recent changes in the laws on contraception and obscenity; current efforts to change the laws on divorce, abortion, and marijuana use). In sum, the strength of a norm cannot be determined by consulting the statute books; rather, it must be determined by how people behave with respect to (or despite) the law. And, as we shall note shortly, the behavior of the American people with respect to negligent driving does not indicate the "community abhorrence" that is a central part of the author's argument.

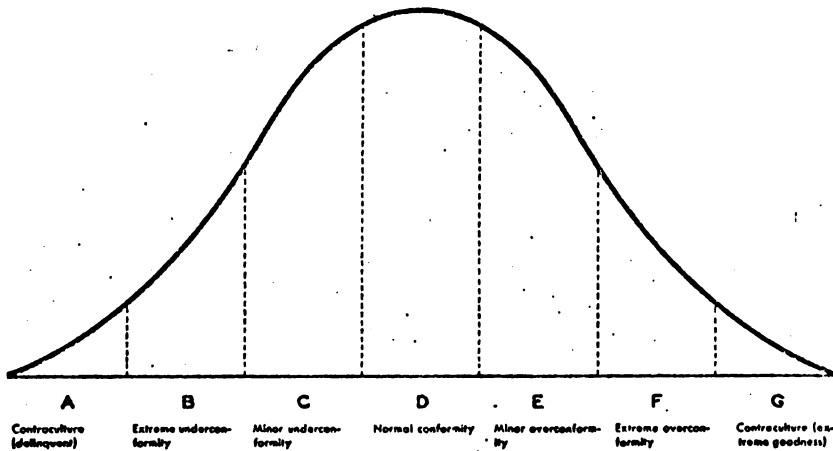


FIGURE 1

The author is equally simplistic in his view of how the members of a society conform to the norms. He seems to regard conformity as a yes-or-no, zero-sum kind of process and to believe that deterrent measures will turn nonconformers into conformers. In actuality, conformity to most norms is rarely a discrete, yes-or-no phenomenon but functions along a continuum—both for the individual and for society as a whole—as shown in Figure 1. No individual conforms completely at all times; instead, he ranges between conformity and various degrees of nonconformity, both positive and negative.<sup>1</sup> Similarly, even the identified nonconformist conforms most of the time (most murderers do not commit more than one murder; most drivers convicted of reckless driving do not drive recklessly at all times).

So, too, for a society as a whole. There are no norms to which *everyone* in a society conforms; a substantial amount of deviance is, as Fig. 1 indicates, "normal" and inevitable. Some of this total proportion of nonconformity is produced by the occasional deviations of generally conforming people. The balance of the nonconformity is produced mostly by people who do not conform because they are incapable of learning or complying with the norms (e.g., mental retardates, alcoholics, psychotics) or are members of a subgroup which has norms that run counter to those of the society as a whole (e.g., members of a juvenile gang, members of certain religious sects). For those types of deviants, conventional deterrent measures do not generally produce compliance or conformity. And, as we shall note shortly, many deviant drivers are members of nonconforming subgroups.

Given the fact that no norm commands universal conformity from all members of a society, one might argue that even if "community abhorrence of the negligent driver" were a very strong norm (an assumption that we shall challenge in subsequent pages), all the recklessness now prevalent on the highways might still be accounted for by (1) generally conforming individuals who occasionally deviate and (2) those individuals who, for reasons of incapacity or allegiance to deviant norms, do not conform to the "anti-negligence" norm. It is important to

<sup>1</sup> Almost twenty-five years ago, criminologists found that more than 90 percent of a random sample of "law-abiding" adults admitted to at least one episode of behavior which, if detected and prosecuted, would have been punished by a maximum sentence of not less than one year in a state prison. (J. S. Wallerstein and C. J. Wyle, "Our Law-abiding Lawbreakers," *National Probation*, March-April 1947, pp. 107-112.) Repeated replications of the research indicate that 90 percent was a conservative figure.

bear in mind that, despite their total impact, crashes are *infrequent* events and that only a small portion of them can be attributed unerringly and exclusively to negligence. This ultimate portion may be less than the proportion of "normal" deviance from the norm.

But the author, despite his use of so strong a word as "abhorrence," has not, in fact, demonstrated that vehicular negligence does violate a strongly held norm. In order to demonstrate this, he would have to show that the laws against violation are strictly enforced, that violators are consistently apprehended and severely punished, and that considerable resources are devoted to eradicating or preventing any and all behavior that might lead to violation. According to these criteria, unjustifiable homicide, for example, can be regarded as a violation of a very strongly held norm. In our society, more than 90 percent of murderers are apprehended (often at very high social cost), the penalties are severe (often including death), efforts are made to eradicate criminal gangs on the grounds that they may encourage murder, conspiracy to commit murder or to incite violence is punishable, and the punishment for murder usually expresses community vindictiveness and efforts at self-protection rather than an attempt to rehabilitate the violator.

On the other hand, such behavior as perjury, fornication, or spitting in public violates weak norms. Although there are laws against such behavior, and although most members of our society would express disapproval of it, the laws are rarely enforced and the punishments are not severe—in part because society does not regard the laws as "realistic," or the behavior as totally avoidable, socially harmful, or worth the very high cost of prevention.

Even a casual examination of the current social attitudes leads to the conclusion that vehicular negligence is not regarded as violating a strongly held norm. The legal penalties are not severe, enforcement is inconsistent but generally at a low level, punishment is often ineffective both in rehabilitating the offender and in protecting society, and violations are often regarded as inevitable. If we assume that the drunken driver is most likely to be the object of "community abhorrence," we should expect that society would devote considerable efforts in blocking his access to vehicle or highway. Yet, aside from some "don't-drink-when-you-drive" campaigns, what measures does society take? One would expect the laws to be comprehensive and effective. Yet most current laws specify a level of alcohol which is regarded as much higher than the level at which impairment occurs. One would expect rigorous enforcement. Yet it is estimated that at least 10 percent of all drivers on the highway at any time are impaired but are not detected. One would expect penalties to be severe, but they are not: even license revocation is not a severe penalty, since some 60 percent of drivers with revoked licenses continue to drive.

If we examine negligence not involving alcohol, we find that the violator is treated even more lightly. First or second offenses are punished by light fines and do not result in his driving being restricted. Even when negligence results in a crash, the outcome is in most cases a civil rather than a criminal action. The mere fact that a driver may insure himself against his own negligence demonstrates that negligence is not negatively sanctioned. It is not possible, for example, to insure oneself against the possibility of committing murder or larceny.

Moreover, if society actually "abhorred" negligent driving, it would take many measures to prevent its occurrence. It would prohibit advertising messages which advocate a style of driving likely to contribute to negligence (just as it prohibits messages inciting to murder). It would prohibit hot-rod clubs (just as it prohibits criminal syndicates). It would give driver education a highly effective and very important role in the curriculum instead of the marginal status it now has. It would monitor the highways systematically for possible violations (just as it inspects baggage to discourage and prevent smuggling). It would supervise with great care the behavior of adjudicated violators (just as it does with criminals on probation or parole). It would protect itself against further harm by incarcerating the violator (as it does with murderers, psychotics, and thieves). It would devote at least as much community effort and research resources to the eradication of negligence as it did to the eradication of polio, which at its worst exacted an annual death toll less than four percent that of highway fatalities. In actuality, of course, it does none of these things.

If, despite a low level of enforcement, almost half of a state population violates the traffic laws frequently enough to be issued at least one citation in a six-year period, one can draw either of two conclusions: (1) the law does not coincide sufficiently with the norms to be taken seriously by most people, or (2)

a large proportion of the driving population finds it impossible to comply with the norm no matter how highly the ideal norm may be valued in public-opinion surveys or in legislation.

This is not to imply that society has no negative feelings whatever about vehicular negligence. Rather it is to point out that such negative feelings are necessarily weakened by overriding values which conflict with them. Our society's stress on individual freedom works against a very high level of traffic surveillance, strict enforcement of traffic laws, and incarceration of offenders. The fact that the automobile has become an economic necessity for so large a proportion of the population operates against wholesale restriction of its use. And the fact that risk-taking is still valued substantially in our society mitigates against punishment of the antisocial risk-taker. The still prevalent feeling that accidents are largely "acts of God" also inhibits the focusing of blame on the negligent driver.

Two further points are perhaps even more important in demonstrating why vehicular negligence does not, in fact, violate a strong social norm. First, the entire concept of individual responsibility has undergone substantial modification during the past fifty years. In law, in psychiatry, in public health, and in many other areas of social interaction there has come to be greater awareness that an individual's actions are attributable less to his free will or his free choice and more to the influences of his psychological and social environment, past and present. Thus, an individual action is seen increasingly to have antecedents for which others—often the society as a whole—are in large part responsible. And this understanding of environmental influences has filtered down from the social scientists and the jurists to the public as a whole. One illustration of this broader understanding of environmental influences on individual actions is the shift of correctional institutions from punishment toward rehabilitation and the general increase in humaneness in the treatment of criminals.

Secondly, as research has become more sophisticated, it has demonstrated that very few kinds of human behavior have single, simply identified causes. With respect to driving behavior in particular, this concept of multiple causation has been much strengthened by evidence that negligence is only one link in a chain of events and conditions leading to a crash, that very few crashes are attributable exclusively to negligence, that vehicle design, highway design, and other factors of the physical and social environment are often implicated, and that modification of these factors might either reduce the incidence of negligence or render its consequences much less costly. This view has developed only within the past decade, but it has been disseminated so rapidly by such public figures as Ralph Nader, by the actions of the federal and state governments, and by reports of scientists that it is now much more widely accepted than the results of the cited Harris Survey would indicate.

If, in view of the foregoing discussion, we recognize that negligence is not in fact a violation of a strong norm and that multiple causation is a more widely accepted explanation for highway crashes, one might conclude that a shift toward the "no fault" system would bring insurance practice into closer harmony with both scientific findings and public sentiment.

#### THE MATHEMATICAL MODEL AND ITS PARAMETERS

A second crucial weakness in the paper under discussion involves the author's use of a systems model (p. 37) to predict deterrence. Each of the parameters that comprise the model is based on well-known social-psychological experiments (pp. 34 ff.) which, the author believes, demonstrate ways in which conformity to norms can be achieved or enhanced. The author then proceeds to argue that the fault system strengthens each of these parameters, thus increasing the over-all power of deterrence.

Unfortunately for his argument, the author's interpretation of these experiments is not shared by the experimenters themselves, by social-psychologists in general, or by any other behavioral scientist familiar with the purposes and background of the experiments. In actuality, these experiments were designed to identify the conditions under which individuals could be induced to abandon conventional social norms and adopt, instead, deviant norms which were arbitrarily devised for the purposes of the experiments.

Most of these experiments were conducted during or shortly after World War II, an event which aroused in behavioral scientists strong interest in such questions as: What were the relevant variables that caused the Germans to abandon their traditional religious and moral values sufficiently to engage in or tolerate

genocide and other atrocities? What conditions could best develop compliance with military norms (which include a willingness to obey unquestioningly and to kill) on the part of soldiers drafted from a civilian life which involved very different norms? Or, more generally, as in the Lewin experiment, what is the most effective way of inducing compliance with new norms, no matter how senseless, arbitrary, or repugnant these new norms might seem in the light of the old ones?

Thus, the Asch experiment demonstrated that Swarthmore sophomores (a group whose norms place high value on intellectual independence and a trust in one's own judgment) could be induced to abandon both these behaviors and to conform, instead, to a subgroup norm that was clearly deviant. Similarly, the Sherif and the Milgram experiments demonstrate not that an individual can be manipulated toward conformity to a widely held social norm but that he can be manipulated to virtually any norm as long as it is held by the subgroup in which he finds himself.

As is usual with laboratory experiments in social psychology, most of the experimental subjects were college students, whose membership in the middle class, whose academic status, whose feelings of autonomy, and whose general conformity with the dictates of the Protestant ethic are likely to give them considerable stability with respect to the norms they accept or reject. If these experiments demonstrate, as they do, a high degree of instability vis-a-vis the norms in relatively stable and secure subjects, the normative instability of less stable and less secure subjects is likely to be substantially greater. Certainly alcoholics and the victims of various psychopathologies (to whom the author attributes a disproportionate number of crashes) have already demonstrated by their behavior their susceptibility to deviation from the norms of society.

This difference in interpretation is crucial because it implies that many individuals—by virtue of their membership in a subgroup that holds clearly deviant norms about driving—are likely to embrace these deviant norms just as easily as did the subjects in the experiments cited. Even if the author is correct in his assessment of the various reinforcements offered by the "fault" system (and there is reason to believe that he overstates the case), such reinforcements are infrequent and insignificant compared to the daily reinforcements toward deviance that stem from membership in a deviant subgroup.

This is not mere speculation. There are data which indicate that teen-agers are more likely to be involved in a crash when there are *two or more* occupants in the vehicle than when they are alone—an indication that deviant attitudes toward risk-taking, toward authority, and toward rules and regulations may be transmitted to, or reinforced in, the driver through immediate peer pressure. There is evidence that the entire lower class in the United States embraces a set of norms that are so different from the dominant middle-class norms as to justify labeling the lower class as a "contra-culture" rather than a subculture<sup>2</sup>—and there is evidence, too, that young drivers whose records show high frequencies of citations and crashes have "working-class characteristics" (Pelz & Schuman; Carlson & Klein). Although there are no satisfactory studies on the subject, there is increasing evidence that members of the lower class may deviate as sharply from the norms about driving as they do from other middleclass norms.

In sum, insofar as the experimental findings can be generalized to the driving population, they predict that substantial groups of the population, by virtue of their membership in deviant subgroups, are more likely to conform to deviant driving norms than to conventional driving norms. This conclusion cannot be used to support the deterrent value of the fault system since it implies that the assumed deterrent effect will not apply to the very groups that may most need to be deterred.

(Whereupon, at 1 p.m., the hearing was adjourned, to reconvene subject to the call of the Chair.)

(The report follows:)

<sup>2</sup> Walter B. Miller, "Lower Class Culture as a Generating Milieu of Gang Delinquency," *Journal of Social Issues*, Vol. 14, No. 3, 1958, pp. 5-19; Albert K. Cohen, "The Delinquency Subculture," in R. Giallombardo (ed.), *Juvenile Delinquency*, Wiley, 1966, pp. 103-116.

**DEPARTMENT OF TRANSPORTATION**



**MOTOR VEHICLE CRASH LOSSES  
AND  
THEIR COMPENSATION  
IN THE  
UNITED STATES**

**A REPORT TO THE CONGRESS AND THE PRESIDENT**

**MARCH 1971**

**By**

**John A. Volpe**

**Secretary of Transportation**

## PREFACE

Public Law 90-313, a Joint Resolution of the Congress, authorized the Secretary of Transportation to conduct a comprehensive study and investigation of the existing compensation system for auto accident losses.

The Joint Resolution recorded four specific Congressional findings which substantially guided the conduct of the study and the scope of its concern. These included:

" . . . suffering and loss of life resulting from motor vehicle accidents and the consequent social and economic dislocations are critical national problems. "

" . . . there is growing evidence that the existing system of compensation is inequitable, inadequate and insufficient and is unresponsive to existing social, economic, and technological conditions. "

" . . . there is needed a fundamental reevaluation of such system, including a review of the role and effectiveness of insurance and the existing law governing liability. "

" . . . meaningful analysis requires the collection and evaluation of data not presently available such as the actual economic impact of motor vehicle injuries, the relief available both from public and private sources, and the role and effectiveness of rehabilitation. "

The perspective of the study, then, was a national one, concerned with the nationwide system of auto accident compensation and its performance, rather than the problems peculiar to one state or region. By implication, the study was asked to address whether, in fact, the system was "inequitable, inadequate and insufficient and . . . unresponsive." Moreover, the study was specifically referred to "insurance" and the "law governing liability" as the subjects to be investigated.

The auto accident compensation system, of course, does not operate in a vacuum; but like any large complex institution, it continuously interacts with, influences and is influenced by other regimes and institutions. Moreover, it is plainly and abundantly clear that many of its troubles and problems are in substantial part not of its own making, but instead are caused by circumstances, events or decisions beyond its control. Thus, for example, the basic determinant of the size and nature of the compensation requirement, i. e., car crash losses, is almost entirely, if not completely, a function of outside forces -- traffic law enforcement, safety measures, car design, driver licensing and education, highway design, etc. Loss costs, themselves, reflect the prices being charged in the marketplace for hospital and medical care, auto repair and replacement parts, legal services, the cost of vehicles, etc., and they, too, cannot be significantly influenced, at least directly, by the compensation mechanism. Any or all of these externalities may themselves be worthy of public scrutiny and study. Indeed, most of them are now being intensively studied. Highway safety, for example, is a major and continuing responsibility of the U. S. Department of Transportation. However, these outside forces have been considered to be beyond the scope and charge of the Congressional mandate to study the existing compensation system, its performance, and possible alternatives to it.

The Department sponsored several major and minor research projects. Much of the output of these projects has been published over the past year in a series of research reports. The principal findings are briefly summarized in this report.

The conclusions made about the present system and its operations should not be interpreted to reflect adversely on any of the participants. The subject under investigation was in fact the "system" and not those who have tried to make it run and improve it. The conclusions are directed to the system.

The recommendations contained herein reflect the prudent hesitation that any public policymaker must feel when proposing changes in an institution that affects so many citizens in such important ways. Continuing public discussion and review should inform the ultimate decision and increase confidence in its soundness. That decision cannot be delayed for long, however, and the recommendations have been framed with that in mind. It is hoped that this report and the study that underpins it will contribute to that decision.

\* \* \* \* \*

The Department of Transportation's Automobile Insurance and Compensation Study was initiated under the administration of Secretary of Transportation Alan S. Boyd and completed under the administration of Secretary of Transportation John A. Volpe. As provided for in Public Law 90-313, the Study was assisted by four public advisory committees -- Industry, Legal, Consumer and Economic Regulation -- whose distinguished members, individually and collectively, made major contributions to both the substance and the guidance of the Study. In addition, at the request of the Department, the Casualty Actuarial Society formed a select committee of its members to advise on the conduct of certain aspects of the Study's research program. Their efforts, too, added immeasurably to the Study's product. The advisory committee members are listed in Appendix A.

Two other agencies, the Federal Trade Commission and the Federal Judicial Center, played major roles in the conduct of certain portions of the Study.

However, it should be noted that both the research and policy findings of this report and its recommendations do not necessarily reflect the views of advisory committee members, either individually or collectively. The same is true of the other agencies who aided in the Study. While their views and advice were strongly

solicited and gratefully received throughout the course of the Study, they bear no responsibility for the conclusions or recommendations reached in this report.

## TABLE OF CONTENTS

	<u>Page</u>
PREFACE	iii
TABLE OF CONTENTS	vii
PART I. AN OVERVIEW: THE SIGNIFICANCE OF MOTOR VEHICLE ACCIDENT COMPEN- SATION IN THE UNITED STATES	1
A. Losses from Motor Vehicle Accidents	2
1. Societal Economic Loss	4
2. Compensable Economic Loss	5
B. Compensation of Auto Accident Losses	8
PART II. SELECTED FINDINGS	15
A. The Automobile Accident Reparations System	15
1. The "Fault" Principle -- Negligence	16
2. The Insurance Element of the Reparations System	21
B. The Economic Consequences of Automobile Accidents	31
1. Economic Loss Suffered by Automobile Accident Victims	32
2. Compensation of Economic Loss	34
3. Timeliness of Payment and Attorney Representation	41
4. The Cost Efficiency of the Automobile Accident Liability System	47
C. The Effects of Automobile Liability Insurance on Loss Reduction	53
1. The Deterrent Effect of Automobile Liability Insurance	53
2. Utilization of Rehabilitation Techniques	58
D. Institutional Strains Created by the Reparations System	61
1. Stresses upon the Insuring Public	61
2. Stresses upon the Insurance Industry	63
3. Pressures Affecting the Residual Market	65
4. Stresses upon Law and Legal Institutions	70
E. Public Opinion: Complaints and Attitudes about Automobile Insurance	80

	<u>Page</u>
F. Summary of the Findings	94
1. Limited Scope of the Auto Accident Liability Reparations System	94
2. Rational Allocation of Compensation Resources	94
3. Cost Efficiency of the Auto Accident Liability Reparations System	95
4. Timing of Compensation Benefits	95
5. Rehabilitation of Accident Victims	96
6. Property Damage	97
7. Strains on Insurance Institutions	98
8. Impact on Other Public Institutions	98
9. Highway Safety and Crash Loss Minimization	99
 PART III. ALTERNATIVES TO THE AUTO-MOBILE ACCIDENT TORT LIABILITY SYSTEM	 101
A. Conceptual Considerations and Options	101
1. The Legal Rule	102
2. The Role of Insurance	103
3. Kinds of Losses to be Compensated	105
4. Private vs. Social Insurance	107
5. Compulsory vs. Voluntary Approaches	109
6. Insurance and the Loss Minimization Objective	110
B. Basic Alternatives	112
1. "Do Nothing Significantly Different"	112
2. "Improve the Present Reparations System"	113
3. "Evolutionary Reform, Type I"	116
4. "Evolutionary Reform, Type II"	119
5. "Total No-Fault"	122
6. "Government Insurance"	125
 PART IV. RECOMMENDATIONS FOR CHANGE	 128
A. Toward a Better Compensation System	128
1. Basic Reliance on First-Party Insurance	128

	<u>Page</u>
2. Availability of Benefits to All Accident Victims	129
3. Coordination of Benefits	129
4. Maximum Choice	130
5. A Privately Operated System	130
6. Maximum Opportunity for Rehabilitation	131
7. Minimal Use of Adversary Procedures	131
B. A Specific Recommendation	133
1. Compulsory First-Party Benefits	133
2. Required Medical Benefits	134
3. Income Loss Protection	134
4. Lost Service Benefits	135
5. Property Damage	135
6. Elimination of Action for Damages	136
C. Cost of Insurance	138
D. Implementation	140
E. The Expected Results	143
APPENDIX A	147

PART I. AN OVERVIEW:  
THE SIGNIFICANCE OF MOTOR VEHICLE ACCIDENT  
COMPENSATION IN THE UNITED STATES

Despite the overwhelming and pervasive influence that the motor vehicle has had on our society, economy and polity, it is only within the last decade that the motor vehicle accident has grown into a problem of national dimensions and concern. Why such a commonplace and familiar occurrence as the auto accident and its aftermath should have achieved this status is a matter that might be profitably reviewed. To put it bluntly: "Why should the Federal Government concern itself with the compensation of motor vehicle accident losses? "

Much of the answer clearly lies with the sheer dimensions of the problem, i. e. , in the monetary, social and human costs of automobile accident losses, accident compensation benefits and the resources absorbed in the compensation process.

However, before examining the overall estimates of losses, benefits and expenses, it is important to keep in mind the limitations of such aggregate data for evaluating the efficiency or adequacy of any compensation system. Aggregates may show that a system is not working efficiently, but alone, they cannot be relied on to prove the contrary. For example, if ten victims each suffer losses of \$1,000 for an aggregate loss of \$10,000, simply knowing that their aggregate benefits amounted to \$53,000 might well cast doubt on the efficiency of the compensation system. Even if their aggregate benefits equaled their aggregate losses, it would not, by itself, prove efficiency since it would still be possible that all benefits were paid to one person while the rest went uncompensated.

### A. Losses from Motor Vehicle Accidents

Before attempting to evaluate the performance of the existing motor vehicle accident compensation system in terms of its aggregate performance, it is important (and sobering) to estimate the losses with which that system must deal.

Simply in terms of human life lost, the results of a typical recent year (1967<sup>1</sup>) are truly monstrous, with more than 50,000 people sustaining motor vehicle accident-related injuries which ultimately resulted in or contributed to their death. Another 450,000 people were seriously injured.<sup>2</sup> How many people suffered lesser injuries is harder to determine, if for no other reason than that a large number of minor accidents go unreported to any source. But one estimate would place these at about 3,750,000.<sup>3</sup> Estimates of the number of

1. Although it would be desirable to have data that reflected current experience, the complexities of the data problem and the time necessary to process injury claims make 1967 the most recent year for which overall aggregate statistics can be presented.
2. U.S. Department of Transportation, Economic Consequences of Automobile Accident Injuries (1970), p. 64. (Hereinafter cited as Economic Consequences.) "Serious injury" is defined in Economic Consequences as an injury that resulted in medical costs (excluding hospital) of \$500 or more, or two weeks or more of hospitalization, or, if working, three weeks or more of missed work, or, if not working, six weeks or more of missed normal activity (p. 1).
3. The total number of people injured in 1967 was estimated at 4,200,000 (U.S. Department of Commerce, Statistical Abstract of the United States (1969), p. 557), from which the 450,000 seriously injured were deducted.

vehicles involved in 1967 accidents run as high as 24,300,000.<sup>4</sup>

These accidents affect their victims in many ways, including medical expenses, lost wages, myriad other types of economic loss, pain, grief over the loss or disability of a loved one, humiliation resulting from disfigurement, loss of use of some bodily member and other distressing consequences. Not all these losses -- for example, pain and suffering, inconvenience or disfigurement -- have a common denominator allowing individual experiences to be aggregated beyond simply counting the number of people who suffer them. Many elements of loss, however, can be quantified in dollar terms. These include medical expenses, wage loss, funeral expenses, costs of replacement services, future lost earnings, property damage and other miscellaneous out-of-pocket expenses. These "economic" items of loss, which can be measured in dollars, are of special significance in our calculation of system effectiveness since money is the basic balm employed by all compensation systems in helping to heal the wounds of accidents.

Economic losses can be viewed from a number of different viewpoints. The two employed here are called "societal" loss and "compensable" loss. The first is a measure of the total loss to society caused by death or injury of one of its members and damage to or destruction of his property. The second starts with societal loss and eliminates that portion which does not create a need for compensation, in most part, the lost future earnings of fatally injured victims with no dependent survivors.

4. National Safety Council, Accident Facts (1968), p. 40.

# 1. Societal Economic Loss<sup>5</sup>

The economic consequences of motor vehicle accidents constitute a serious national social and economic problem worthy of the careful attention of government at all levels. An estimate of society's losses from motor vehicle crashes in 1967 is shown in Table 1.

TABLE 1  
ESTIMATED SOCIETAL ECONOMIC LOSS RESULTING  
FROM 1967 AUTOMOBILE ACCIDENTS

	Millions of Dollars	Percent
Medical Expenses	\$ 1,243	9%
Wage Loss	(8,175)	56
Fatalities	5,163	
Injuries	3,012	
Other Expenses	207	1
Property Damage	4,860	34
TOTAL	\$14,485	100%

Source: Economic losses of seriously injured victims are taken from Economic Consequences, pp. 83, 84, 87 and 88. Quantifying the economic losses of other accidents is more difficult as no direct investigation of the amounts involved or even the number suffering injury has been possible. However, approximations can be developed. The 3,750,000 personal injuries neither fatal nor "serious" (as that term has been defined) can be assumed to be relatively minor in

5. "Societal economic loss" includes the estimated lost future earnings of all fatal victims, including those without dependent survivors. For a brief discussion of this concept as contrasted with that of "compensable economic loss," see Economic Consequences, p. 23.

economic impact. Personal injury claimants who did not suffer death, permanent disability or economic loss to date of settlement in excess of \$1,500 had average medical losses of \$131, average wage losses of \$81 and average other expenses of \$12 (based on unpublished data from the Department of Transportation's personal injury study). Assuming that the remaining 3,750,000 injured victims suffered similar losses, their aggregate economic losses would be \$840 million -- \$491 million medical loss, \$304 million wage loss and \$45 million other loss (excluding property damage).

Property damage is the most difficult loss to measure accurately. Assuming that 24,300,000 vehicles were involved in property damage accidents at an average cost per vehicle of \$200, the total loss would be \$4,860 million. The \$200 estimate was derived by taking the average paid loss (including loss adjustment expenses) for property damage claims in 1967 reported by the Insurance Rating Board to the Department in response to an inquiry and deducting loss adjustment expenses on the basis of ratios appearing in A. M. Best Company, Best's Aggregates and Averages (1968). (Hereinafter cited as Aggregates and Averages.)

## 2. Compensable Economic Loss

It would be unfair to judge any compensation system against the foregoing loss estimate since it would not be rational to attempt to compensate all societal future lost earnings. To develop an estimate of compensable losses, future earnings of fatality victims with no dependent survivors should be removed. In addition, some reduction should be made to reflect the fact that even the decedents with dependent survivors would not, themselves, consume resources. After making these adjustments,

compensable losses can be estimated at about \$10,549 million, as shown in Table 2.

TABLE 2  
ESTIMATED COMPENSABLE ECONOMIC LOSS  
RESULTING FROM 1967 AUTOMOBILE ACCIDENTS

	Millions of Dollars	Percent
Medical Expenses	\$ 1,243	12%
Wage Loss	(4,239)	40
Fatalities	1,227	
Injuries	3,012	
Other Expenses	207	2
Property Damage	4,860	46
<b>TOTAL</b>	<b>\$10,549</b>	<b>100%</b>

Source: Table 1 and Economic Consequences, pp. 75 and 78.

Significantly, there are very substantial losses involved at both extremes of the loss spectrum. Of the total \$10.5 billion of compensable loss, \$3.4 billion or 32 percent was incurred by the 45,000 very seriously or fatally injured victims who each sustained losses of \$25,000 or more.<sup>6</sup> The average loss of these victims was \$76,000.<sup>7</sup> By contrast, the approximately 22,000,000<sup>8</sup> victims who suffered only property damage incurred total losses of about \$3.8 billion<sup>9</sup> or 36 percent of total compensable loss.

Thus, it would seem that there are significant opportunities for economic savings if vehicle occupants could

6. Economic Consequences, pp. 89-90.

7. Ibid.

8. National Safety Council, Accident Facts (1968), p. 40.

9. By removing more serious accidents, the Insurance Rating Board's \$200 property damage estimate would be reduced to perhaps \$175.

be protected from serious injury or death when crashes do occur and also if vehicle damage could be prevented or significantly reduced in minor accidents. A car capable of resisting damage in low-speed collisions and of protecting its occupants in severe crashes would very substantially reduce overall accident losses, even if all vehicles in severe crashes were totally demolished in an economic sense. Economic loss reduction efforts, therefore, to be truly effective, must address the accident environment of both serious and minor crashes.

**TABLE 3**  
**NET REPARATIONS RECEIVED AND FUTURE**  
**BENEFITS EXPECTED BY DEPENDENTS OF**  
**DECEASED PERSONS AND BY SERIOUSLY**  
**INJURED PERSONS IN 1967 AUTO ACCIDENTS**

	Millions of Dollars	Percent
Net Automobile Liability Payments	\$ 813	32%
Auto Medical Payments Benefits	108	4
Auto Collision Insurance	141	6
Hospital and Medical Insurance	282	11
Life Insurance	358	14
Other Personal Insurance	101	4
Employee's Paid Sick Leave	75	3
Workmen's Compensation	52	2
Social Security Disability Payments	36	1
All Other Current Benefits	123	5
Future Social Security Benefits	317	13
All Other Future Benefits	127	5
<b>TOTAL</b>	<b>\$2,533</b>	<b>100%</b>

Source: Economic Consequences, pp. 154-156. Total benefits in Economic Consequences differ somewhat from total benefits in Table 3. This difference is explained in a footnote on page 127 of the above publication.

It is logical, of course, to compare these reparations to the victims' losses. In doing so, however, one must keep in mind not only the relative imprecision of the estimates involved but also the arbitrariness of the definition of "compensable losses." "Compensable losses," as the term is used here, includes both very small and very large economic losses, and it can be legitimately questioned whether any formal reparations system -- especially one based on a privately operated insurance system -- can or should try to compensate fully either of these kinds of losses. This is particularly

true with respect to the lost future earnings of deceased victims with dependent survivors or those of permanently disabled victims, a type of loss which bulks very large in the total. Indeed, the lost future earnings from a single individual victim discounted to present value can, given the right combination of circumstances, amount to as much as a third of a million dollars. Whether society can afford to assure all such victims full recovery of all calculable losses is highly questionable, at least at this time. Moreover, in the comparisons of losses and benefits used here, no allowance has been made for any tax benefits accruing to victims as a result of their casualty losses. All these considerations should influence any value judgments drawn from the following loss/benefit comparisons.

The aggregate benefits of \$2,533 million received by dependents of deceased victims and by seriously injured victims can be compared with their aggregate compensable economic losses which were estimated at \$5,127 million.<sup>1</sup> Thus, at least in overall terms, it can be seen that total benefits from all compensation systems fell far short of compensating the economic losses of those most severely affected by motor vehicle accidents.

Not all benefits paid by these systems, of course, were intended to compensate economic losses. In particular, some of those paid under automobile liability insurance were for intangible losses. In addition, some victims were able to collect from two or more sources for the same losses. When these facts are taken into consideration, it is found that \$3,116 million of the \$5,127 million of total compensable economic loss was not compensated.<sup>2</sup> In contrast, the remaining victims received in the aggregate an estimated \$566 million more than their estimated economic loss.

1. Economic Consequences, pp. 89-90.
2. Based on unpublished data from the Department's study of fatally and seriously injured auto accident victims.

Although it is not possible to make the same kind of estimates for the reparations received by all other victims, some rough approximations have been developed, and they are presented in Table 4. These reparations, estimated at \$3,937 million, can be compared with total compensable economic losses for this group of \$5,422 million.<sup>3</sup> Again, a sizeable amount of potential compensable economic loss is left uncompensated. However, clearly the implications are not quite the same as with the seriously injured, since the losses suffered by less seriously injured victims are not nearly as severe, nor the impact of these losses as distressing.

**TABLE 4**  
**ESTIMATED AGGREGATE REPARATIONS RECEIVED**  
**BY PERSONS NOT KILLED OR SERIOUSLY INJURED**  
**IN 1967 AUTOMOBILE ACCIDENTS**

	Millions of Dollars	Percent
Net Automobile Liability Payments	\$2,256 (a)	57%
Auto Medical Payments Benefits	139 (a)	4
Auto Collision Insurance	1,246 (b)	32
Hospital and Medical Insurance	149 (c)	4
Other Personal Insurance	40 (d)	1
Employee's Paid Sick Leave	37 (e)	1
Workmen's Compensation	24 (f)	1
All Other Current Benefits	46 (g)	1
<b>TOTAL *</b>	<b>\$3,937</b>	<b>100%</b>

\*Detail may not add to total due to rounding.

Source: (a) Gross bodily injury and property damage direct incurred losses were \$2,902 million and \$1,194 million in 1967 (A. M. Best Company, Best's Executive Data Service (1968), Property

3. Total compensable loss (\$10,549 million) less compensable losses of fatally and seriously injured victims (\$5,127 million).

and Liability Edition). According to Insurance Rating Board estimates given to the Department of Transportation, medical payments benefits amounted to about 8.5 percent of bodily injury incurred losses, or about \$247 million in 1967. From the remaining \$3,849 million liability losses (which is assumed to represent liability payments), lawyers' fees of \$725 million and other litigation expenses of \$55 million were deducted, leaving net liability payments of \$3,069 million. Plaintiffs' attorneys' fees were estimated at 27.3 percent of bodily injury payments, excluding medical payments (U.S. Department of Transportation, Automobile Personal Injury Claims (1970), p. 73). Other litigation expenses were estimated by using the 1968 expenses derived from U.S. Department of Transportation, Automobile Accident Litigation (1970), p. 7 (i. e., \$250 expenses per case x 220,000 cases). After deducting \$813 million in net benefits to fatally and seriously injured accident victims (Table 3), net liability benefits to all other victims were \$2,256 million. Deducting \$108 million in auto medical payments benefits to fatally and seriously injured auto accident victims (Table 3) from \$247 million yields \$139 million in medical payments benefits to the remaining victims.

(b) In 1967, stock and mutual direct collision losses incurred were \$1,309 million and reinsurer losses were \$8 million, from Aggregates and Averages (1968), pp. 135 and 205. Losses incurred by reciprocals were estimated at \$70 million on the basis of their share of losses in 1968 based on data received from Best's Executive Data Service. From the total collision losses incurred in 1967 of \$1,387 million, \$141 million was paid to victims of fatal or serious injuries (Table 3), and \$1,246

million was paid to the rest of the auto accident population.

(c) Hospital and medical insurance benefits for the seriously injured with total economic losses of less than \$1,500 aggregated about 30.3 percent of total medical expenses for the same group. Thus,  $0.303 \times \$491 \text{ million} = \$149 \text{ million.}^*$

(d) Other personal insurance benefits for the seriously injured with less than \$1,500 total economic loss were about 4.8 percent of total losses (excluding property damage). Thus,  $0.048 \times \$840 \text{ million} = \$40 \text{ million.}^*$

(e) Employee's paid sick leave benefits to the seriously injured with total economic losses below \$1,500 were about 12.1 percent of total wage loss for the group. Thus,  $0.121 \times \$304 \text{ million} = \$37 \text{ million.}^*$

(f) Workmen's compensation benefits for the seriously injured with total economic losses below \$1,500 were 3.0 percent of total medical and wage loss for the group. Thus,  $0.03 \times \$795 \text{ million} = \$24 \text{ million.}^*$

(g) Miscellaneous other benefits to the seriously injured with total economic loss under \$1,500 was 5.5 percent of total losses excluding property damage). Thus,  $0.055 \times \$840 \text{ million} = \$46 \text{ million.}^*$

---

\*Percentages are derived from Economic Consequences, pp. 103-104 and 181-183; dollars are estimates derived in the source to Table 1.

Table 5 presents the total reparations for all automobile accidents in 1967.

**TABLE 5**  
**ESTIMATED NET REPARATIONS RECEIVED AND**  
**FUTURE BENEFITS EXPECTED BY ALL PERSONS**  
**SUFFERING LOSSES IN 1967 AUTOMOBILE ACCIDENTS**

	Millions of Dollars	Percent
Net Automobile Liability Payments	\$3,069	47%
Auto Medical Payment Benefits	247	4
Auto Collision Insurance	1,387	21
Hospital and Medical Insurance	431	7
Life Insurance	358	6
Other Personal Insurance	141	2
Employee's Paid Sick Leave	112	2
Workmen's Compensation	76	1
Social Security Disability Payments	36	1
All Other Current Benefits	169	3
Future Social Security Payments	317	5
All Other Future Benefits	127	2
<b>TOTAL*</b>	<b>\$6,470</b>	<b>100%</b>

\*Detail may not add to total due to rounding.

Source: Table 3 and Table 4.

\* \* \* \* \*

Thus, in summary, aggregate net reparations for auto accident victims in 1967 totaled about \$6.5 billion compared with aggregate "compensable losses" of \$10.5 billion. While this overview of auto accident losses and benefits gives some crude sense of the dimensions and performance of the present complex of reparations systems, the more important matter is how the victim fares as an individual, and this will be examined in some detail in this report.

## PART II. SELECTED FINDINGS

A. The Automobile Accident Reparations System

The automobile accident reparations system, in the sense that it enjoys legal recognition and is sustained by legal pressures to implement it, consists of a complex of tort liability principles and automobile liability insurance. The legal pressures mainly consist of the financial responsibility statutes which, while varying from State to State, have a common theme and purpose, i. e., the exertion of a high degree of compulsion upon every motorist to possess automobile liability insurance. The counterparts of these pressures on the motorist are the assigned risk plans which compel automobile liability insurers to accept an equitable share of drivers who are unable to obtain insurance coverage voluntarily in the private insurance market. Both forms of compulsion are premised upon the likelihood that the losses of the innocent accident victim will remain uncompensated no matter how clear his legal right to recover unless the proceeds of an automobile liability insurance policy are available.

Viewed from a broader perspective, reparations for automobile accident losses often flow from other types of insurance or benefit sources. These include the kinds of automobile insurance which yield benefits on a contractual basis without respect to fault, such as automobile medical payments and collision insurance, and non-automobile benefit systems, such as life insurance, accident and health insurance, hospital and medical prepayment plans and social security. However, except in Massachusetts under its recently implemented partial "no-fault" legislation, none of the first-party automobile contractual coverages enjoy legislative recognition. Indeed, the automobile owner normally cannot legally compel the issuance of such contractual coverages if he is unable to purchase them in the voluntary insurance market. Just as the workmen's compensation

reparations system cannot be safely founded upon the assumption that workers injured in industrial accidents will necessarily have access to other reparation sources, neither can a reparations system for traffic accident victims assume that such victims have other means of securing compensation for their injuries and other losses.

### 1. The "Fault" Principle -- Negligence

Despite the prevalence of the notion that "negligence" as the predicate and moral basis for the compensation of accident victims has legal roots stretching back into antiquity, the fact is that legal scholars are well agreed that "negligence" constitutes a relatively recent development in Anglo-American law. Superseding a strict liability regime, the ascendancy of the negligence principle can be traced to the Industrial Revolution. Its rationale was that the needs of society demanded that the growth of industry and the expansion of commerce should not be impeded by the onerous financial liabilities inherent in a strict liability regime. As Professor Fleming James has said:

"While the basing of liability on fault is no new thing, the concept of negligence as an independent ground of liability is quite modern, and it succeeded a period in which liability for accidental harm was dominated by the trespass or strict liability principle. This was a development largely of the nineteenth century; it coincided with the transportation and industrial revolution and with the climate of opinion that has been called social Darwinism with its individualism and its acceptance of laissez faire. During this period the notion that liability should be based on fault did indeed become dominant."<sup>1</sup>

1. Fleming James, "Analysis of the Origin and Development of the Negligence Actions," The Origin and Development of the Negligence Action (1970), U.S. Department of Transportation, p. 36.

The judicial philosophy which ultimately prevailed held that it was better for the victim of an accident not provably the "fault" of some other individual to bear the financial consequences of his injury than to deter others from engaging in socially useful activities because of the risk of having to bear the costs of accidents that might occur. Fault, then, became a morally flavored compromise between earlier strict liability concepts and the total abnegation of responsibility for harm flowing from socially desirable activities.

However, "fault" in the context of negligence carries no connotation of intent or evil motivation, but rather, is concerned solely with a breach of legal duty resulting from a failure to exercise that care which "a reasonable man of ordinary prudence in like circumstances" would exercise. This hypothetical man may manifest limitations that embody the normal standard of community behavior, but nevertheless is an abstract ideal in that "[h]e is not to be identified with an ordinary individual who might occasionally do unreasonable things; he is a prudent and careful man who is always up to standard."<sup>2</sup>

Under the strict liability principle, the focus of concern was the activity giving rise to the injury or damage; under the negligence principle, the focus shifted to the conduct of the actor and whether or not his conduct deviated from the standard of the ordinary, prudent and reasonable man. In noting that the mood of the times called for scrutiny of the actor's conduct rather than consideration of the victim's plight, Professor James has written: "In the climate of opinion prevailing in the

- 
2. William Prosser, Torts, Third Ed. (1964), p. 154. Any moral tones of the negligence principle are further attenuated through application of the doctrine of respondeat superior which renders an employer or principal vicariously liable for the negligence of his employee or agent.

nineteenth century, it is not at all surprising that the fault concept . . . emerged as dominant. "3

The same era which gave birth to the philosophy that social progress should not be stifled by fastening the costs of injuries and losses upon useful activities also gave birth to the automobile; and the same deference to progress militated against holding the vehicle's owner or operator strictly accountable for any and all injury or damage which it might cause. In general, the contention that the automobile was inherently dangerous, and therefore that principles of strict liability should apply, was rejected.<sup>4</sup>

The tort system requires, as a precondition to the shifting of the economic burden of loss from the accident victim to the putative wrongdoer, that the victim affirmatively establish not only that the alleged wrongdoer was negligent, but also that such negligence directly or proximately caused the accident and injuries. The factual and legal hurdles that the accident victim must surmount if he is to achieve economic recovery generate adversary proceedings which alone can resolve the disputed issues if the parties are unable or unwilling to resolve them by agreement. If the injured accident victim fails to prove that the alleged wrongdoer was negligent or that such negligence was the proximate cause of the accident, or fails to prove any other essential element of his case, he cannot shift his loss to the wrongdoer.

A further legal impediment to the accident victim's recovery was raised in the English law in the form of the

3. Fleming James, *op. cit.*, pp. 40-41.

4. However, at least one jurisdiction, Florida, held that the automobile was an inherently dangerous instrumentality to such extent that its owner would be held vicariously liable for the negligence of any driver he permitted to use the vehicle.

doctrine of contributory negligence.<sup>5</sup> Under this rule, a plaintiff in a negligence case was not entitled to recover if his own negligence contributed in even the slightest degree to the proximate cause of the accident.<sup>6</sup> Despite

5. The doctrine has since been abandoned in England.

6. The doctrine itself appears to rest upon a meager foundation: ". . . [T]he concept that contributory negligence bars recovery rose to prominence in response to the demands for a legal system compatible with the demands of a growing industrial economy. The unimpressive opinions in Butterfield v. Forrester, 11 East 59, 103 Eng. Rep. 926, (K.B. 1809), uniformly recognized as the fountainhead of the doctrine, could not have received the proliferation to which they were subjected if an additional bar to recovery were not considered to be necessary and appropriate to the times. Society as a whole stood to benefit from the workings of an industrial economy, and as a general proposition it could not afford to burden itself with compensating those individuals who were so unfortunate as to be injured accidentally by an instrument of progress." (Cornelius J. Peck, "Negligence and Liability Without Fault in Tort Law," The Origin and Development of the Negligence Action (1970), U.S. Department of Transportation, p. 56.

The rule has met with all but universal condemnation from those who have had occasion to comment upon it. Thus, it has been said: "Where one party asks that another compensate him for an injury caused by their joint negligence, the most equitable solution of the problem would be to allow him to recover only that proportion of the loss for which the other had been responsible. The courts, however, have consistently refused to apportion loss in negligence actions at common law. The reasons usually advanced for this position are that the law will not settle disputes between wrongdoers and that it has no scales with which to measure the relative fault of the negligent parties. The first has been attacked by

scholarly strictures against the doctrine of contributory negligence, it took root in this country; and until quite recently, the rule prevailed in all but a handful of States. However, accelerated by studies and inquiries into the operation of the automobile accident reparations system, there has been a decided trend toward abandonment of the contributory negligence doctrine in favor of the comparative negligence rule, particularly of the Wisconsin type under which the plaintiff may recover so long as his negligence was less than that of the other party, with his recovery being diminished proportionate to his negligence.<sup>7</sup> The harshness of the contributory negligence

---

almost every author who has had occasion to discuss contributory negligence. Especially it is subject to criticism as applied to automobile cases, wherein the plaintiff's wrongs are usually inadvertent and are scarcely ever intentional. Although the second has more merit, the courts without difficulty have apportioned negligence in other fields of law." (Richard M. Nixon, "Changing Rules of Liability in Automobile Accident Litigation," *Law and Contemporary Problems*, Vol. 3 (1936), p. 476).

7. Although a few States require that a plaintiff affirmatively establish his freedom from contributory negligence, the great weight of American authority appears to be that contributory negligence is an affirmative defense for the defendant with the burden of proof lying with him. Thus, except in the relatively rare case where the facts and the inferences arising from such facts incontrovertibly establish that the plaintiff's negligence contributed to the cause of the accident, the issue of contributory negligence can be resolved only by a jury, and juries customarily have been loathe to find that the injured plaintiff's own negligence contributed to the proximate cause of the accident.

rule has been softened not only by statutes but, to an even greater extent, by judicial doctrines.<sup>8</sup>

Although negligence law in its formative stages was primarily concerned with comparing the actor's conduct to the standards of a hypothetical ordinary, prudent and reasonable man, its principal concerns now lie with the actual or alleged violation of statutes or ordinances. Normally, where a statute or ordinance has been enacted for the safety and protection of the public, its violation constitutes negligence per se, i. e., the ideal, reasonable man always observes the law. The abundance of laws, ordinances, etc., surrounding the use and operation of motor vehicles on the streets and highways makes it almost certain that any accident controversy will be resolved through reference to the statutory framework.

## 2. The Insurance Element of the Reparations System

The purpose and function of casualty insurance, including automobile insurance, is to spread the risk of loss among many people exposed to a common hazard. Insurance works to substitute certainty for uncertainty --

### 8. For example, the doctrine of "last clear chance."

That is, where the plaintiff's negligence has placed him in a position of peril but where the defendant knew or should have known of plaintiff's peril in time to avoid the accident through the exercise of due care, the defendant is liable notwithstanding the plaintiff's original negligence. It is interesting to note that the American Bar Association relates the "last clear chance" rule to contributory negligence by recommending that: ". . . [S]tates in which contributory negligence is abolished should consider the abolition of the last clear chance rule." (American Bar Association, Report of the American Bar Association Special Committee on Automobile Accident Reparations (1969), p. 79.) (Hereinafter cited as ABA Report.)

the certainty of a small cost (the insurance premium) for the uncertainty of no cost or some cost ranging from small to catastrophic (the accident loss).

Although both the frequency and severity of a given type accident may be predictable actuarially when one is dealing with a large number of actors or events, specifically who will have such an accident and when cannot be predicted. However, if each of several persons exposed to a common hazard contributes an amount (the premium) sufficient in the aggregate to cover the predicted losses, then those upon whom the contingency actually falls will have to bear no loss greater than the premium itself. Collaterally, those insured persons spared from the hazard may rest secure in the knowledge that they are immune from any loss in excess of their premium. Thus, unlike gambling which creates a risk that did not exist prior to the wager, insurance eliminates a risk that existed prior to the insurance transaction.

There is nothing in the insurance principle which requires that every premium payer contribute exactly the same amount to the insurance fund. Equity may require that those having a greater exposure to the hazard (i. e., a greater likelihood of loss or a greater value at risk) contribute more than those less exposed. Conversely, those who have been free of loss in the past cannot be freed from contributing to the common fund for future losses as long as they remain exposed to the hazard.

Originally, the sole purpose of automobile liability insurance was to defend insured motorists against claims by others and to protect their assets from being depleted by adverse judgments. No consideration of the adequacy, the timeliness or the assurance of compensation for the injured party played any part in the matter. Indeed, the entire avoidance of compensation of the accident victim was calculated to further the interests of the contracting parties since the insurer stood to gain from the

maximization of its profits and the insured stood to gain from the minimization of his rates. Moreover, the insured and his insurer were free to circumscribe their mutual obligation however they desired with respect to the scope of the risk insured and the amount of premium to be paid. These were matters in which the potential accident victim had no rights since he was neither a party to the contract nor an intended third-party beneficiary. The theoretical right of the accident victim to recover in a tort action was, of course, not jeopardized in any way by the insurance contract. Under such circumstances, the liability insurer's right to require the insured to observe the terms of the contract meticulously and to condition its own obligations upon such observance was beyond question, either in law or in morals.

Financial responsibility measures sprang from a public recognition that the claimant's theoretical right of tort recovery in a motor vehicle accident was illusory unless the judgment obtained was actually paid, and that this was quite unlikely to happen unless the judgment became the obligation of an insurer. Except for Massachusetts, which enacted a compulsory automobile liability insurance law as far back as 1927, early financial responsibility measures generally were loose and persuasive in character rather than obligatory. Recognition of their inadequacy grew with mounting numbers of automobile accident victims and led to their strengthening in the late 1940's and early 1950's.

Currently, every State has a financial responsibility law ranging from outright compulsion, such as those in Massachusetts, New York and North Carolina, to the security deposit type of law which, while not actually compelling the purchase of liability insurance, does exert a powerful pressure for its purchase.<sup>9</sup>

- 
9. The security deposit law provides that a motorist involved in an accident and unable to establish evidence of liability insurance is required to deposit

Lying between the compulsory and the security deposit types of financial responsibility laws are other varieties which do not compel the purchase of liability insurance but do require a declaration of its presence or absence during motor vehicle registration. Absence of liability insurance requires payment into an unsatisfied judgment fund or uninsured motorists' fund.<sup>10</sup> Such payment, of course, does not afford the uninsured motorist any protection with respect to his legal liability, nor does it free him from the obligation to deposit security in the event he is involved in an accident. Conversely, the accident victim has no direct rights against such funds.<sup>11</sup>

---

security sufficient to cover the amount of any claim or suit against him or lose his driving privileges and registration certificate. The requirement for the deposit of security essentially is without regard to whether or not the motorist involved in the accident was at fault. In certain instances, however, such as where the other driver was convicted of an offense or simply ran into the rear of the motorist's stopped vehicle, the obligation to deposit security may be avoided.

10. New Jersey, Maryland and Michigan have unsatisfied claim and judgment laws with unsatisfied judgment funds, while Virginia and South Carolina have enacted uninsured motorist laws with uninsured motorist funds. Motorists who have been convicted of certain grave traffic offenses or who have failed to deposit security incident to accident involvement are ineligible to obtain registration through payment into the unsatisfied claim and judgment or uninsured motorist funds, but rather, are compelled to obtain liability insurance certified by an authorized insurer. Such persons are also usually required under the weaker safety responsibility type of financial responsibility law to establish proof of financial responsibility for the future through policies certified by authorized insurers.
11. In the case of the unsatisfied claim and judgment funds, the accident victim must first exhaust all reasonable

maximization of its profits and the insured stood to gain from the minimization of his rates. Moreover, the insured and his insurer were free to circumscribe their mutual obligation however they desired with respect to the scope of the risk insured and the amount of premium to be paid. These were matters in which the potential accident victim had no rights since he was neither a party to the contract nor an intended third-party beneficiary. The theoretical right of the accident victim to recover in a tort action was, of course, not jeopardized in any way by the insurance contract. Under such circumstances, the liability insurer's right to require the insured to observe the terms of the contract meticulously and to condition its own obligations upon such observance was beyond question, either in law or in morals.

Financial responsibility measures sprang from a public recognition that the claimant's theoretical right of tort recovery in a motor vehicle accident was illusory unless the judgment obtained was actually paid, and that this was quite unlikely to happen unless the judgment became the obligation of an insurer. Except for Massachusetts, which enacted a compulsory automobile liability insurance law as far back as 1927, early financial responsibility measures generally were loose and persuasive in character rather than obligatory. Recognition of their inadequacy grew with mounting numbers of automobile accident victims and led to their strengthening in the late 1940's and early 1950's.

Currently, every State has a financial responsibility law ranging from outright compulsion, such as those in Massachusetts, New York and North Carolina, to the security deposit type of law which, while not actually compelling the purchase of liability insurance, does exert a powerful pressure for its purchase.<sup>9</sup>

- 
9. The security deposit law provides that a motorist involved in an accident and unable to establish evidence of liability insurance is required to deposit

Lying between the compulsory and the security deposit types of financial responsibility laws are other varieties which do not compel the purchase of liability insurance but do require a declaration of its presence or absence during motor vehicle registration. Absence of liability insurance requires payment into an unsatisfied judgment fund or uninsured motorists' fund.<sup>10</sup> Such payment, of course, does not afford the uninsured motorist any protection with respect to his legal liability, nor does it free him from the obligation to deposit security in the event he is involved in an accident. Conversely, the accident victim has no direct rights against such funds.<sup>11</sup>

security sufficient to cover the amount of any claim or suit against him or lose his driving privileges and registration certificate. The requirement for the deposit of security essentially is without regard to whether or not the motorist involved in the accident was at fault. In certain instances, however, such as where the other driver was convicted of an offense or simply ran into the rear of the motorist's stopped vehicle, the obligation to deposit security may be avoided.

10. New Jersey, Maryland and Michigan have unsatisfied claim and judgment laws with unsatisfied judgment funds, while Virginia and South Carolina have enacted uninsured motorist laws with uninsured motorist funds. Motorists who have been convicted of certain grave traffic offenses or who have failed to deposit security incident to accident involvement are ineligible to obtain registration through payment into the unsatisfied claim and judgment or uninsured motorist funds, but rather, are compelled to obtain liability insurance certified by an authorized insurer. Such persons are also usually required under the weaker safety responsibility type of financial responsibility law to establish proof of financial responsibility for the future through policies certified by authorized insurers.
11. In the case of the unsatisfied claim and judgment funds, the accident victim must first exhaust all reasonable

Understandably, the courts have discerned in the financial responsibility measures a pervasive public policy to imbue the auto accident reparations system with a fundamental concern for the accident victim.<sup>12</sup> In recognition of the importance of insurance to the compensation of the victim, the courts have often refused to recognize any forfeiture of the insured's coverage because of breach of policy conditions (e.g., such as those requiring immediate notice of accident or the insured's cooperation) in the absence of a clear showing by the insurer that its rights have been actually and substantially prejudiced.<sup>13</sup>

---

efforts toward recovering from the offending motorist. In the case of uninsured motorist funds in Virginia and South Carolina, the accident victim must recover, if at all, from his own uninsured motorist insurer since the proceeds of uninsured motorist funds are used solely to reimburse the insurers for providing uninsured motorist coverage.

12. Thus, in Interinsurance Exchange of Automobile Club of Southern California v. Ohio Casualty Insurance Co., 58 Cal. 2d 142, 373 P.2d 640, the California Supreme Court said: "The entire financial responsibility law must be liberally construed to foster its main objective of giving monetary protection to that ever changing and tragically large group of persons who while lawfully using the highways themselves suffer grave injury through the negligent use of those highways by others."
13. See Allstate Insurance Co. v. Grillon, 251 A.2d 256 (N.J. Sup. Ct., App. Div., 1969), where the court, in commenting upon the necessity for the insurer to prove prejudice in order to be relieved of obligation through the insured's failure to give notice, said: ". . . [I]t becomes unreasonable to read the provision unrealistically or to find that the carrier may forfeit the coverage, even though there is no likelihood that it was prejudiced by the breach. To do so would be unfair to insureds. It would also disserve

Moreover, with respect to reparating innocent accident victims, liability insurance would often be meaningless unless coverage extended beyond the owner to any driver having his express or implied permission to use the insured automobile. Actually, only a minority of jurisdictions statutorily mandate such an omnibus coverage. But many courts have concluded that the overriding public policy found in the financial responsibility law precludes the insured and insurer from agreeing to any limitation that would deny liability coverage to a driver using the vehicle with permission of the insured named in the policy.<sup>14</sup>

Since accomplishment of the objectives of the financial responsibility statutes demands that the motorist required to obtain automobile liability insurance be able to do so, it is understandable that the adoption of assigned risk plans and their rapid growth in size

---

the public interest, for insurance is an instrument of social policy that the victims of negligence be compensated."

Also see Cooper v. Government Employees Insurance Co., 237 A.2d 870, where the court admonished: "We should therefore be mindful also of the victims of accidental events in deciding whether a forfeiture should be upheld."

14. See, for example, Wildman v. Government Employees Insurance Co., 307 P.2d 359 (California) and Jenkins v. Mayflower Insurance Exchange, 380 P.2d 145 (Arizona), where the court concluded (p. 147): "Where the basis upon which this [financial responsibility] act has been declared constitutional is 'preventing financial hardship and possible reliance upon the welfare agencies,' we cannot constitutionally allow artful distinctions . . . to defeat the purpose of the act."

followed hard upon the heels of the strengthening of the financial responsibility laws.<sup>15</sup>

Until quite recently, no State's assigned risk plan gave an applicant the legal right to demand and receive first-party coverages through such plans. Thus, although a motorist who was denied liability insurance in the voluntary insurance market might have a legal right to obtain such insurance through the assigned risk plan, he could not, for example, compel the issuance of medical payments or collision insurance. The importance that many persons attached to such coverages led them to insure with specialty companies. These companies would issue the additional coverages along with the required liability coverage, often at very high rates. Many such insurers specializing in high-risk drivers proved to be financially unsound and ultimately became insolvent.

It is often assumed incorrectly that only drivers with demonstrably poor driving records populate assigned risk plans. The fact is, however, that many "clean" risks with driving records unblemished by accidents or violations are forced to resort to such plans simply because of their inability to purchase the legally required liability insurance in the voluntary market. For example, 62 percent of 1969 New York assigned risk plan applicants enjoyed "clean" driving records during the preceding 36 months; the proportion was 67 percent in South Carolina, 57 percent in North Carolina, 55 percent in Wisconsin and 50 percent in Pennsylvania.<sup>16</sup>

Such conditions have led to a growing insistence that assigned risk plans be broadened to include medical payments and collision coverages, and a number of States have moved to broaden their plans. In addition, both the

---

15. U.S. Department of Transportation, Insurance Accessibility for the Hard-to-Place Driver (1970), p. 31. (Hereinafter cited as Insurance Accessibility.)

16. Ibid., p. 37.

National Association of Insurance Commissioners and the National Industry Committee on Automobile Insurance Plans (assigned risk plans) have proposed that applicants be able to obtain higher limits of liability, medical payments, uninsured motorist and physical damage (collision and comprehensive) insurance.

Despite the legal pressure upon motorists to possess liability insurance, the problem presented by the uninsured motorist has remained. It appears conservative to estimate that 15 to 20 percent of the nation's automobiles in 1967 were not even nominally insured with respect to liability.<sup>17</sup> It would seem valid to assume that the owners and drivers of uninsured automobiles have a greater accident potential than insured owners and drivers.

It was the ruinous financial losses sustained by the innocent victims of automobile accidents that led to demands for legislative solutions along the lines of compulsory insurance, unsatisfied judgment laws and similar remedies. By and large, insurers and their associations denounced such remedies as being not only ineffective but as creating more problems than they solved. The insurance industry countered such legislative proposals by offering uninsured motorist coverage which was designed to enable the insured to recover from his own insurer all sums that he was legally entitled to recover but could not collect from an uninsured motorist. Some States, such as Virginia and South Carolina, immediately seized upon uninsured motorist coverage as the solution to the problems presented by the financially irresponsible motorists and enacted laws requiring that such coverage be provided with every liability insurance

- 
17. U.S. Department of Transportation, "Drivers Without Insurance," Driver Behavior and Accident Involvement: Implications for Tort Liability (1970), pp. 199-213. (Hereinafter cited as Driver Behavior.)

policy issued or delivered within its jurisdiction.<sup>18</sup> Additionally, every person registering an uninsured motor vehicle in Virginia and South Carolina was required to pay a fee into the uninsured motorists fund. These fees were paid to liability insurers either to reduce or eliminate premiums paid by insured drivers for uninsured motorist insurance.

Prompted, perhaps, by failures among automobile insurers specializing in high-risk drivers, uninsured motorist coverage statutes have been enacted so widely that now only the District of Columbia, Maryland and North Dakota are without legislation mandating that such coverage be offered. However, in a majority of States the insured may reject the coverage. It is noteworthy that all three of the compulsory liability insurance States have passed such statutes, and New York is one of the 18 States which do not permit rejection of the coverage.

\* \* \* \* \*

It is clear that the principles of tort liability for negligence and the insurance aspects of the present reparations system had separate, independent origins,

- 
18. The scope of uninsured motorist coverage, at least as interpreted by the courts is considerably broader than originally formulated by the insurance industry. For instance, it is generally held that when a motorist was nominally insured at the time of the accident but somehow breached his policy's conditions, or suffered a rescission because he misrepresented certain material facts in his insurance applications, the victim's uninsured motorist insurance covers the loss. Again, where the wrongdoer's insurer becomes insolvent subsequent to an accident, the wrongdoer is often considered an uninsured motorist and the victim can collect under his uninsured motorist coverage. Many uninsured motorist statutes now specifically cover both points.

and that at least originally, interaction between the two was neither intended nor contemplated; it is equally clear that the universal adoption of financial responsibility measures, exerting varying degrees of compulsion to purchase automobile liability insurance, has made it impossible for either component of the system to revert to its former state or purpose.

U.C. BERKELEY LIBRARY

## **B. The Economic Consequences of Automobile Accidents**

Even a reasonably complete understanding of the performance of the auto accident reparations system requires that it be approached from several different perspectives. Thus, during the course of the Department's Study, the system's performance was examined from four vantage points:

1. that of the general public;
2. that part of the public making personal injury claims against auto liability insurers;
3. that part of the public filing suit for personal injuries; and
4. that part of the public killed or seriously injured in automobile accidents, whether or not a tort claim was made.

The main quantitative findings described in this section resulted from two separate study efforts. One examined a sample of personal injury liability claims settled by insurance companies over a two-week period in late 1969.<sup>1</sup> The other examined the losses and reparations of a sample of seriously and fatally injured victims during 1967.<sup>2</sup> Although it would have been preferable if both studies could have drawn their samples from the same population base and accident period, this was not possible. For example, no single sampling approach can economically develop the wanted data about both the run-of-the-mill accident and the serious accident. Quantitative differences in the way losses are distributed also argue for separate approaches. For example, although millions of people are injured annually in auto accidents, the number suffering truly significant injuries is relatively small. In the aggregate,

- 
1. U.S. Department of Transportation, Automobile Personal Injury Claims (1970).
  2. U.S. Department of Transportation, Economic Consequences of Automobile Accident Injuries (1970).

however, the losses of this group are extremely important. Moreover, recent research indicates that serious crashes may also be distinguished qualitatively in various associated phenomena, such as personality characteristics of the driver, traffic environment and other factors not yet clearly understood.<sup>3</sup>

In addition, the varying and frequently long times necessary for injuries to mature, for losses to be determined and for claims to be disposed of require a compromise between the need for fresh data and the need for complete data. And to the extent that completeness is sought, the fallibility of human memory introduces a further complication. Rarely does any one person have complete information concerning the circumstances surrounding the accident and its resulting losses.

Despite these difficulties, it is believed that the research results which follow present a valid "general" portrayal of the performance of the present reparations system.

1. Economic Loss Suffered by Automobile Accident Victims

Automobile accident losses can be divided into two broad categories. Intangible losses include those basically not susceptible to objective measurement in dollars, e. g., pain and suffering, mental or emotional disturbance, humiliation resulting from disfigurement, and bereavement over the loss of a loved one. Tangible or economic losses which can be measured in dollars, include medical expense, wage loss, and property damage. The Study's research focused mainly on economic loss although considerable information was also collected

3. David Klein and Julian Waller, Causation, Culpability and Deterrence in Highway Crashes (1970), for the U. S. Department of Transportation.

about the incidence of some of the more important (i. e., serious) kinds of intangible loss.

Most automobile accident victims, including those injured, do not, in fact, suffer major loss. As Table 6 and Table 7 illustrate, the majority of personal injury tort claimants incur no permanent injury and have economic loss of less than \$1,000.

TABLE 6  
PERCENTAGE DISTRIBUTION OF PAID PERSONAL  
INJURY CLAIMANTS BY TYPE OF PERMANENT INJURY

Type of Permanent Injury	Percent of Paid Claimants
Fatality	1.0%
Permanent total disability	.2
Permanent partial disability	4.0
Permanent disfigurement	2.5
No permanent injury	92.4
TOTAL*	100.0%

\*Detail does not add to total due to rounding.

Source: Automobile Personal Injury Claims, p. 19.

TABLE 7  
PERCENTAGE DISTRIBUTION OF PAID PERSONAL  
INJURY CLAIMANTS AND LOSS DOLLARS BY SIZE  
OF ECONOMIC LOSS TO DATE OF SETTLEMENT

Economic Loss to Date of Settlement	Percent of Paid Claimants	Percent of Loss Dollars
None	7%	--
\$1-1,000	82	33
1,001-2,500	7	22
2,501-10,000	3	29
10,001 & over	--	16
TOTAL*	100%	100%

\*Detail may not add to totals due to rounding.

Source: Automobile Personal Injury Claims, p. 50.

Indeed, only a small fraction of personal injury accidents accounts for the great bulk of economic loss, with 10 percent of paid tort claimants incurring two-thirds of all economic losses to date of settlement (Table 8). If lost future earnings had been calculable for all victims, their inclusion would cause the disproportion to be even greater.

On the average, slightly more than half of all paid personal injury economic losses to date of settlement were medical costs and about 40 percent reflected lost income.<sup>4</sup> However, in small cases (e. g., where economic losses were less than \$500) medical costs loomed larger, about two-thirds of the total, and income loss was less important accounting for less than a third of total losses. For very serious cases (e. g., with total losses over \$25,000) these relationships were reversed.

Seriously injured victims (excluding fatalities) had an average loss to date of interview (18 to 30 months after the accident) of \$4,200.<sup>5</sup> Of this amount, about 45 percent was wage loss, 38 percent medical expense, 12 percent property damage and 5 percent other types of loss.<sup>6</sup> These average loss figures by no means fully reflect the impact of wage loss for the more serious cases. Indeed, for half of the serious injury cases (excluding fatalities) involving any future wage loss, the indicated present (discounted) value of those losses averaged more than \$25,000.<sup>7</sup>

## 2. Compensation of Economic Loss

Tort recovery from auto liability insurance is one of the most important sources of compensation for personally injured automobile accident victims, although it

4. Automobile Personal Injury Claims, p. 29.

5. Economic Consequences, p. 1.

6. Ibid.

7. Ibid.

about the incidence of some of the more important (i. e., serious) kinds of intangible loss.

Most automobile accident victims, including those injured, do not, in fact, suffer major loss. As Table 6 and Table 7 illustrate, the majority of personal injury tort claimants incur no permanent injury and have economic loss of less than \$1,000.

TABLE 6  
PERCENTAGE DISTRIBUTION OF PAID PERSONAL INJURY CLAIMANTS BY TYPE OF PERMANENT INJURY

Type of Permanent Injury	Percent of Paid Claimants
Fatality	1.0%
Permanent total disability	.2
Permanent partial disability	4.0
Permanent disfigurement	2.5
No permanent injury	92.4
TOTAL*	100.0%

\*Detail does not add to total due to rounding.

Source: Automobile Personal Injury Claims, p. 19.

TABLE 7  
PERCENTAGE DISTRIBUTION OF PAID PERSONAL INJURY CLAIMANTS AND LOSS DOLLARS BY SIZE OF ECONOMIC LOSS TO DATE OF SETTLEMENT

Economic Loss to Date of Settlement	Percent of Paid Claimants	Percent of Loss Dollars
None	7%	--
\$1-1,000	82	33
1,001-2,500	7	22
2,501-10,000	3	29
10,001 & over	--	16
TOTAL*	100%	100%

\*Detail may not add to totals due to rounding.

Source: Automobile Personal Injury Claims, p. 50.

Indeed, only a small fraction of personal injury accidents accounts for the great bulk of economic loss, with 10 percent of paid tort claimants incurring two-thirds of all economic losses to date of settlement (Table 8). If lost future earnings had been calculable for all victims, their inclusion would cause the disproportion to be even greater.

On the average, slightly more than half of all paid personal injury economic losses to date of settlement were medical costs and about 40 percent reflected lost income.<sup>4</sup> However, in small cases (e. g., where economic losses were less than \$500) medical costs loomed larger, about two-thirds of the total, and income loss was less important accounting for less than a third of total losses. For very serious cases (e. g., with total losses over \$25,000) these relationships were reversed.

Seriously injured victims (excluding fatalities) had an average loss to date of interview (18 to 30 months after the accident) of \$4,200.<sup>5</sup> Of this amount, about 45 percent was wage loss, 38 percent medical expense, 12 percent property damage and 5 percent other types of loss.<sup>6</sup> These average loss figures by no means fully reflect the impact of wage loss for the more serious cases. Indeed, for half of the serious injury cases (excluding fatalities) involving any future wage loss, the indicated present (discounted) value of those losses averaged more than \$25,000.<sup>7</sup>

## 2. Compensation of Economic Loss

Tort recovery from auto liability insurance is one of the most important sources of compensation for personally injured automobile accident victims, although it

4. Automobile Personal Injury Claims, p. 29.

5. Economic Consequences, p. 1.

6. Ibid.

7. Ibid.

must be remembered that it is not designed or intended to compensate all victims. Therefore, the fact that many victims do not receive compensation from this system does not, by itself, mean that it isn't working as designed. For example, only 45 percent of all those killed or seriously injured in auto accidents benefited in any way under the tort liability system.<sup>8</sup>

Tort recovery, however, was found to be very unevenly distributed among successful personal injury claimants. As shown in the following table, claimants with losses to date of settlement of \$1,000 or less (89 percent of all paid claimants) sustained 33 percent of total losses and received 46 percent of total tort payments. Claimants with losses exceeding \$2,500 constituted slightly more than 3 percent of all claimants but sustained 45 percent of the losses and received only 31 percent of total payments. The inclusion of future wage losses would tend to increase the proportion of loss dollars in the larger loss categories.

TABLE 8  
PERCENTAGE DISTRIBUTION OF PAID PERSONAL  
INJURY CLAIMANTS, LOSS DOLLARS AND PAYMENT  
DOLLARS BY SIZE OF ECONOMIC LOSS  
TO DATE OF SETTLEMENT

Economic Loss to Date of Settlement	Percent of Claimants	Percent of Loss Dollars	Percent of Payment Dollars
None	7%	--	2%
\$1-1,000	82	33%	44
1,001-2,500	7	22	23
2,501-10,000	3	29	24
10,000 & over	--	16	7
TOTAL*	100%	100%	100%

\*Detail may not add to totals due to rounding.

Source: Automobile Personal Injury Claims, p. 50.

8. Ibid., p. 3

Table 9 shows the percentage of fatally or seriously injured victims who were successful in obtaining compensation from the tort system and the degree of their success in relation to their economic loss.

TABLE 9  
COMPARISON OF REPARATIONS RECEIVED BY  
FATALLY OR SERIOUSLY INJURED PERSONS WITH  
AND WITHOUT TORT RECOVERY BY SIZE OF LOSS

Total Economic Loss	Percent with Tort Recovery	Ratio of Net Recovery to Loss	
		With tort	Without tort
\$1-499	54%	4.5	0.8
500-999	63	2.6	0.5
1,000-1,499	49	2.4	0.7
1,500-2,499	47	2.0	1.0
2,500-4,999	44	1.6	0.6
5,000-9,999	44	1.1	0.6
10,000-24,999	52	0.7	0.4
25,000 & over	42	0.3	0.3
TOTAL	48%	0.6	0.4

Source: Economic Consequences, p. 47.

When the economic loss was small, i.e., less than \$500, victims recovering under tort received an average of four and one-half times their economic loss. However, at the other end of the loss spectrum, when loss was \$25,000 or more, even successful tort claimants averaged a net recovery of only one-third of their economic loss.

Inconsistencies with the theory of tort recovery are apparent. For example, a greater proportion of victims recover under tort than would be expected in view of the fact that one-third of the accidents involve only one car.<sup>9</sup>

9. Ibid., p. 365.

Furthermore, while tort theory says that qualified (innocent) victims are entitled to compensation for all their losses, both tangible and intangible, even successful tort claimants with serious injuries, who presumably also suffered serious intangible losses, do not on the average recover even their economic loss.

One explanation for these anomalies is that most liability claims are not settled in court but are bargained to settlement by the claimant or his attorney and an insurance company. Even claims of doubtful merit have some value in this arrangement simply because of the administrative expenses associated with investigation and defense. Therefore, insurance companies are usually willing, particularly with small claims where the administrative expense is greater than the economic loss, to settle a questionable claim, or in insurance parlance, to "buy" the claim. The bargaining advantage tends to shift to the insurance company for larger value claims since it can better afford to wait for settlement than the victim who may be badly pressed financially.

Insurance policy limits also explain part of the low recovery rates by the seriously injured. For example, in the study of personal injury tort claims, the most frequently found coverage limit for auto bodily injury liability insurance (about 30 percent of all policies) was \$10,000/\$20,000,<sup>10</sup> which corresponds with the minimum financial responsibility laws of many states. Since recovery under the tort system is virtually dependent on the availability of insurance, low coverage limits are tantamount to low recovery potential for the victim. Uninsured motorists constitute another hurdle to recovery since uninsured motorists coverage and unsatisfied judgment funds almost always limit recovery to that stipulated in minimum financial responsibility laws.

---

10. Automobile Personal Injury Claims, p. 100.

There are, of course, other sources of compensation for automobile accident victims besides the liability system. Table 10 shows the frequency with which various reparation sources were used by fatally and seriously injured victims. About nine out of ten fatally or seriously injured victims obtained some compensation from at least one reparation source. Family medical insurance was the most common, closely followed by auto liability insurance.

TABLE 10  
SOURCES OF REPARATIONS FOR ECONOMIC  
LOSSES OF FATALLY OR SERIOUSLY INJURED  
AUTO ACCIDENT VICTIMS

Sources of Reparation	Percent Receiving Reparations
<b>Families' Insurance:</b>	
Medical	48%
Life	7
Auto Medical	35
Collision	30
Other	14
<b>Miscellaneous:</b>	
Net Tort	45
Sick Leave	18
Workmen's Compensation	7
Social Security Disability	2
Other	8
<b>Future Compensation:</b>	
Social Security	3
Other	1
<b>Total Receiving Some Reparation</b>	<b>91%</b>

Source: Economic Consequences, p. 43.

As shown below, the importance of each compensation source differed according to the size of the victim's

loss. Recovery from medical insurance, for example, increased relatively with size of loss except for very large losses. Wage replacement (e. g., sick leave, workmen's compensation, social security, etc.) became more important as the amount of loss increased. Policy limits or other limits on recovery affect collateral benefit sources as well as auto liability insurance.

TABLE 11  
PERCENT OF REPARATIONS RECEIVED AS  
COMPENSATION BY FATALLY OR SERIOUSLY  
INJURED PERSONS FROM SELECTED SOURCES,  
BY SIZE OF LOSS

Total Economic Loss	Medical Insurance	Life Insurance	Net Tort	Wage Replacement
\$1-499	4%	12%	74%	4%
500-999	10	7	60	13
1,000-1,499	11	6	57	6
1,500-2,499	10	23	38	13
2,500-4,999	15	6	40	12
5,000-9,999	18	1	39	17
10,000-24,999	20	6	42	20
25,000 & over	6	24	17	49
TOTAL	11%	14%	32%	27%

Source: Economic Consequences, p. 45.

In total, fatally or seriously injured victims received about a third of their benefits from tort recoveries, slightly more than one-fourth from various wage replacement sources, 11 percent from medical insurance and 14 percent from life insurance. Another 10 percent was received from other auto coverages, i. e., medical payments and collision.

As shown in Table 12, when recoveries from all sources are compared to all losses, it is still evident that the fatally or seriously injured victims with large

economic losses fare poorly relative to those with smaller economic losses. When net tort recoveries are compared to all losses, the results are even more dramatic. For example, victims whose compensable economic losses were under \$2,500 accounted for only 7 percent of the total loss but received 27 percent of the net tort payments. When recovery from all sources was considered, they received 19 percent of all benefits that society provided. By contrast, victims with economic losses in excess of \$10,000 suffered 77 percent of the losses but received only 51 percent of all benefits and only 36 percent of net tort payments.

TABLE 12  
PERCENTAGE DISTRIBUTION OF LOSSES AND  
BENEFITS FOR FATALLY AND SERIOUSLY INJURED  
VICTIMS BY SIZE OF ECONOMIC LOSS

Total Economic Loss	Total Losses	Net Tort	Total Benefits All Sources
\$1-999	1%	6%	3%
1,000-2,499	6	21	16
2,500-9,999	16	36	30
10,000 & over	77	36	51
TOTAL*	100%	100%	100%

\*Detail may not add to totals due to rounding.

Source: Economic Consequences, pp. 89-90 and 154-156.

As previously noted, fewer than one out of ten personal injury tort claimants dies or suffers permanent injury or disfigurement as a result of his accident. The following table shows the average liability insurance payment received by successful tort claimants and average economic loss to date of settlement by severity of injury. In every category the average payment was greater than the average economic loss "to date of settlement." These loss figures, however, do not include future lost earnings. Particularly in the two classes where

economic loss was greatest, the addition of lost future earnings presents an entirely different picture. The average total economic loss including lost future earnings was \$22,894 for fatalities and \$78,000 for permanent total disability cases.<sup>11</sup> Thus, the average recovery from tort of victims in these two categories was but a fraction of their average total economic loss.

TABLE 13  
PERCENTAGE DISTRIBUTION OF PAID PERSONAL  
INJURY CLAIMANTS, AVERAGE TORT PAYMENTS  
AND AVERAGE ECONOMIC LOSS TO DATE OF  
SETTLEMENT BY TYPE OF PERMANENT INJURY  
(Exclusive of Lost Future Earnings)

Type of Permanent Injury	Percent of Paid Claimants	Average Payment	Average Economic Loss
Fatality	1.0%	\$10,981	\$3,944
Perm. Total Disability	.2	12,556	7,888
Perm. Partial Disability	4.0	7,520	3,045
Perm. Disfigurement	2.5	4,514	1,294
No Perm. Injury	92.4	830	333
All Claimants*	100.0%	\$ 1,313	\$ 515

\*Detail does not add to total due to rounding.

Source: Automobile Personal Injury Claims, pp. 19, 32 and 53.

### 3. Timeliness of Payment and Attorney Representation

One important criterion for assessing the performance of any compensation system is timeliness of payment, i. e., the length of the period between the time an injury is sustained and the time some or all compensation is received.

<sup>11</sup> Ibid., p. 53.

One Departmental study explored how long it takes to settle all kinds of personal injury liability claims arising out of automobile accidents by examining claims settled during a given two-week period and then measuring the elapsed time back to the date of the accident. The following table shows that the number of claims disposed of increases proportionately faster than the settled losses or payments. This, of course, reflects the fact that small claims tend to be settled sooner, and perhaps with less controversy, than larger claims. Half of the claims were settled in less than six months after the accident. Half of the loss dollars involved in all claims had not been settled until more than a year had elapsed, and the same is true for total payments on these claims.

TABLE 14

CUMULATIVE PERCENTAGES OF PAID PERSONAL INJURY CLAIMANTS, LOSS DOLLARS AND PAYMENT DOLLARS BY ELAPSED TIME FROM ACCIDENT TO SETTLEMENT

Elapsed Time from Accident to Settlement	Cumulative Percent of:		
	Paid Claims Settled	Loss Dollars Settled	Benefits Paid
60 days	33%	7%	7%
180	58	24	23
365	76	46	45
998	93	83	82

Source: Automobile Personal Injury Claims, p. 84.

Seriously injured accident victims or their survivors waited on the average 16 months for final payment. Table 15 indicates the expected positive correlation between the amount of economic loss and length of time to settlement. Final tort settlement took on the average one-half year longer for seriously injured victims with economic losses of \$2,500 or more than it did for persons with smaller losses.

TABLE 15  
AVERAGE TIME LAPSE IN MONTHS TO FINAL  
SETTLEMENT OF THOSE FATALITY AND SERIOUS  
INJURY CASES WITH TORT SETTLEMENT  
BY ECONOMIC LOSS

Total Economic Loss	Average Lapse in Time (Months)
\$1-2,499	13
2,500 or more	19
All cases	16

Source: Economic Consequences, p. 52.

Partial interim payments to tort claimants in advance of final settlement is a technique used by many insurance companies to improve the timeliness of compensation. About 8 percent of fatality and serious injury cases received some kind of interim payments.<sup>12</sup> No substantial difference was discerned in elapsed time to final settlement between claimants receiving interim payments and those who did not receive interim payments.<sup>13</sup>

In the study of personal injury tort claims, 5.2 percent of all paid claimants received some payment in advance of settlement, such payments representing 2.5 percent of total payments and 6.4 percent of total losses. The following table indicates that as the amount of economic loss increases, the proportions of claimants and payment dollars covered by advance payments also tend to increase. However, the relative amount of loss dollars that are covered remains about the same for most sizes of loss, but drops substantially when losses exceed \$25,000.

12. Economic Consequences, p. 51.

13. Ibid.

TABLE 16  
PERCENTAGE OF CLAIMANTS, PAYMENT DOLLARS  
AND LOSS DOLLARS COVERED BY INTERIM  
PAYMENTS BY SELECTED SIZE OF LOSS

All Paid Claims	Economic Loss to Date of Settlement					Total
	None	\$501- 1,000	\$1,501- 2,500	\$5,001- 10,000	Over \$25,000	
Claimants	.9%	7.2%	11.5%	14.0%	13.3%	5.2%
Payments	.4	2.0	2.6	4.3	8.7	2.5
Losses	--	5.7	6.8	7.8	3.6	6.4

Source: Automobile Personal Injury Claims, p. 96.

Table 17, which presents the same data broken down by attorney representation, shows a greater utilization of interim payments for those claimants who do not have an attorney. When counsel was not retained, advance payments covered 7.7 percent of paid claimants, 7.8 percent of total payments and 17.2 percent of losses. On the other hand, when an attorney was present in the case (and the adversary climate thereby heightened), these percentages were significantly lower: 2.3 percent, 1.0 percent and 2.6 percent, respectively. The differences are even more dramatic when comparisons are made between comparable "size of loss" categories. Thus, for example, when attorneys were not retained and losses ranged between \$5,001-\$10,000, 36.5 percent of the claimants, 16.1 percent of the payment dollars and 26.2 percent of the loss dollars were covered by interim payments. But when victims with the same amount of loss employed attorneys, comparable utilization of interim payments was 7.5 percent, 1.3 percent and 2.4 percent, respectively.

TABLE 17  
PERCENTAGE OF CLAIMANTS, PAYMENT DOLLARS  
AND LOSS DOLLARS COVERED BY INTERIM  
PAYMENTS BY SELECTED SIZE OF LOSS  
AND ATTORNEY REPRESENTATION

Attorney Representation	Economic Loss to Date of Settlement					
	None	\$501- 1,000	\$1,501- 2,500	\$5,001- 10,000	Over \$25,000	Total
Without Attorney	.9%	17.8%	3.9%	36.5%	50.0%	7.7%
Claimants	.7	6.1	11.2	16.1	6.4	7.8
Payments	--	12.7	25.0	26.2	5.9	17.2
Losses						
With Attorney						
Claimants	.8	2.9	5.2	7.5	8.3	2.3
Payments	.3	.9	.9	1.3	9.6	1.0
Losses	--	2.9	2.7	2.4	3.6	2.6

Source: Automobile Personal Injury Claims, p. 96.

The time required to settle the tort claims of personal injury claimants is vastly different for those who retain an attorney and those who do not, with the latter's claims being settled much sooner. Claimants who retain an attorney but do not go to suit recover their losses more rapidly than claimants choosing to sue. Thus, while 86 percent of the claims were settled within six months of the accident when no attorney was present, less than 4 percent were settled in a comparable period when a suit was filed. In interpreting the data in the following table it should be remembered that while the split between claimants with attorneys and those without is about 50-50, the former suffered the bulk of total dollar losses.

**TABLE 18**  
**CUMULATIVE PERCENTAGES OF CLAIMS SETTLED**  
**BY ATTORNEY REPRESENTATION AND ELAPSED**  
**TIME FROM ACCIDENT TO SETTLEMENT**

Elapsed Time Between Accident and Settlement	Cumulative Percentage of Claims Settled			
	No Attorney	Attorney	Attorney- No Suit	Attorney- Suit
60 days	58%	3%	5%	--
180	86	25	37	4%
365	95	54	74	18
998	100	85	98	62

Source: Automobile Personal Injury Claims, p. 91.

The seriousness of a victim's injury is a significant factor in producing longer tort settlement times. Because permanent injury cases have higher average losses and because it takes time to establish the permanency of the injury, these claims take longer to settle than cases generally, as shown in Table 19.

**TABLE 19**  
**CUMULATIVE PERCENTAGES OF CLAIMS SETTLED**  
**BY TYPE OF PERMANENT INJURY AND ELAPSED**  
**TIME FROM ACCIDENT TO SETTLEMENT**

Cumulative Percent of Claims Settled	Days from Accident to Settlement			
	60 days	180 days	365 days	998 days
<b><u>Fatality</u></b>				
with attorney	1%	19%	35%	81%
without attorney	32	76	95	98
<b><u>Perm. Total Disability</u></b>				
with attorney	--	3	39	86
without attorney	10	40	80	100
<b><u>Perm. Partial Disability</u></b>				
with attorney	1	8	29	74
without attorney	18	48	72	97
<b><u>Perm. Disfigurement</u></b>				
with attorney	1	8	32	71
without attorney	21	58	80	99

Source: Automobile Personal Injury Claims, p. 93.

#### **4. The Cost Efficiency of the Automobile Accident Liability System**

The economic efficiency or cost benefit performance of compensation systems can be approached from several perspectives. A common approach employed for automobile accident liability insurance is to measure how much of the premium dollar actually goes to the victim for benefits, or sometimes to the victim for benefits and the policyholder for legal defense services. The approach taken here adopts another perspective, that of society and what it pays for the support of the entire liability compensation mechanism as compared to what accident victims receive in terms of net benefits. This approach allows the inclusion of certain costs not paid for by premiums, such as the public costs of the court

system, and the exclusion of parts of the premium which are clearly neither expenses nor benefits of the compensation function, such as premium taxes.

TABLE 20  
ESTIMATED NET AUTOMOBILE LIABILITY  
INSURANCE PAYMENTS, 1968  
(Millions of Dollars)

Gross Direct Incurred Losses	
Bodily Injury Liability	\$3,178
Property Damage Liability	1,453
	<u>\$4,631 (a)</u>
Less:	
Medical Payments	\$ 270 (b)
Claimants' Lawyers' Fees	794 (c)
Other Litigation Expenses	55 (d)
TOTAL PAYMENTS	<u>\$3,512</u>

Sources: (a) A. M. Best Company, Best's Executive Data Service (1969), Property and Liability Edition, Experience by State, pp. A2-99-19 and A2-99-20.

(b) Estimated from information supplied to the Department of Transportation by the Insurance Rating Board indicating that first-party medical payments benefits amounted to about 8.5 percent of incurred bodily injury losses.

(c) Estimated at 27.3 percent of incurred bodily injury liability losses, excluding medical payments (Automobile Personal Injury Claims, p. 73).

(d) Automobile Accident Litigation, p. 7  
(i. e., \$250 expenses per case x 220,000 cases).

**TABLE 21**  
**ESTIMATED AUTOMOBILE LIABILITY INSURANCE**  
**OPERATING EXPENSES, 1968**

Expenses	Millions of Dollars	Percent
Claimants' Expenses	\$849	23%
Attorneys' fees	\$794(a)	
Other litigation expenses	55(b)	
Insurers' Claims Expenses	960	25
Attorneys' fees	\$180(c)	
Other litigation expenses	55(b)	
Other loss adjust. expenses	725(d)	
Insurers' Sales Expenses	1,353(e)	36
Commissions & brokerage	\$957	
Other acquisition expenses	396	
Insurers' General Underwriting Expenses (Excluding Taxes)	393(e)	10
Insurers' Investment Expenses	43(f)	1
Public Costs	170	5
Costs of providing courts	\$134(g)	
Costs of administering financial responsibility legislation	30(h)	
Costs of regulating liability insurers	6(i)	
<b>TOTAL SYSTEM EXPENSES</b>	<b>\$3,768</b>	<b>100%</b>

Source: (a) See reference (c) of source to Table 20.  
 (b) See reference (d) of source to Table 20.  
 (c) Automobile Accident Litigation, p. 40.  
 (d) Loss adjustment expense ratios were applied to bodily injury and property damage premiums written by stock and mutual companies (from Aggregates and Averages (1969), pp. 129, 131, 203 and 205). A loss adjustment expense ratio of 9.6, based on the overall adjustment expenses reflected in Aggregates and Averages (1969), pp. 215 and 217, was applied to the bodily injury and property damage premiums

written as indicated by Best's Executive Data Service. Attorneys' fees and other litigation expenses were deducted from gross loss adjustment expenses incurred in order to avoid double counting.

(e) Estimated from premium and ratio data from the sources in the manner described in note (d) *supra*.

(f) Total investment expenses for stocks, mutuals, reciprocals and Lloyds were allocated on the basis of premiums written in Aggregates and Averages (1969). This should tend to understate actual costs attributable to liability coverages which contribute disproportionately to loss reserves.

(g) Automobile Accident Litigation, p. 7.

(h) Data on the costs of administering State financial responsibility laws were sparse and outdated. However, data for six states with approximately 26 million registered vehicles indicated a range of 18.6¢ per registered motor vehicle under a voluntary-type safety responsibility law to 57.4¢ per registered motor vehicle under a compulsory liability insurance law. Using 30¢ per motor vehicle as a conservative estimate of the cost of administering financial responsibility laws and a vehicular population of 99.6 million private and commercial motor vehicles in 1968, as indicated in U.S. Department of Transportation, 1968 Highway Statistics, total administrative costs approximated \$30 million.

(i) In 1967, total insurance regulatory expenses were estimated at \$40,456,444. (From Hearings before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, 91st Congress, 1st Session, The Insurance Industry, Part 15 (1970), p. 8920.) Allocation of auto liability insurance was made on the basis of premiums written. This figure was used for 1968 expenses.

By dividing the total system expenses by system benefits, an estimate can be obtained of cost performance of the overall liability insurance system, i. e., how much it takes in total system expenses to deliver \$1 in net benefits to victims.

TABLE 22  
ESTIMATED COST/BENEFIT RATIO  
AUTOMOBILE LIABILITY INSURANCE SYSTEM

<u>Total System Expenses</u>		=	<u>\$3,768 million</u>	=	\$1.07
Total System Benefits			\$3,512 million		

Thus, according to this calculation, tort liability insurance would appear to cost in the neighborhood of \$1.07 in total system expenses to deliver \$1.00 in net benefits to victims.

This calculation, of course, does not address itself to the matter of the victim's need for benefits, i. e., whether auto liability insurance payments duplicate or overlap benefits from other sources, nor does it consider the need for, or quantitative appropriateness of, benefits for intangible losses. Both these and other matters become appropriate questions when cost efficiency is addressed from the victim's perspective.

One analysis addressing the cost efficiency of the automobile accident liability insurance system from the consumer's perspective has indicated that 44 cents out of every premium dollar collected is used to compensate accident victims for their losses.<sup>14</sup> Of this amount, 8 cents is duplicative of payments from other sources and 21 1/2 cents is used to pay for general damages

14. Robert E. Keeton, Automobile Insurance Reform Tailored to the Need, Statement Prepared for the Joint Committee on Insurance, Massachusetts, March 11, 1969, pp. 1-8.

(i. e., "pain and suffering" or intangible losses), leaving 14 1/2 cents to compensate for otherwise uncompensated economic losses.

This analysis indicates further that the remaining 56 cents is needed to operate the auto liability insurance system. General overhead -- including acquisition expenses, taxes and profit -- requires 33 cents from every premium dollar. Claims administration costs -- including salaries and fees for claims investigators, defense attorneys and plaintiff attorneys -- consume the remaining 23 cents.

### C. The Effects of Automobile Liability Insurance on Loss Reduction

#### 1. The Deterrent Effect of Automobile Liability Insurance

The tort liability system, resting on the concept of negligence, views most motor vehicle accidents and accident losses as the consequences of careless and avoidable driver behavior. Offenders are "guilty" of deviations from the standard of care exhibited by "a reasonable man of ordinary prudence," and consequently, are responsible for the reparation of losses suffered by "innocent" victims. Automobile liability insurance then shifts these losses from the "guilty" policyholders to their insurance companies, and thereby to all insurance policyholders -- guilty and innocent alike.

The belief that accidents, and by extension accident losses, stem from negligent driving behavior pervades not only the auto insurance system, but also other related institutions. Police efforts concentrate on guilt determination; the court system adjudicates disputes of fault and amounts of damages; licensing authorities attempt to remove deviant drivers through point systems and/or re-train traffic offenders through driver education instruction. All of these institutions attempt to "punish" the errant driver in order to deter or prevent him from future driving misbehavior, and, consequently, minimize accident losses and protect assets. Punishment may take the form of traffic citations from the police, fines or imprisonment from the courts, license suspension or revocation from motor vehicle departments and higher premiums, policy cancellations, etc. from auto insurers.

Unfortunately, the claim of a significant deterrent effect for the present automobile liability insurance system has so far proven unsusceptible to substantiation by empirical evidence. Nor does significant evidence exist to support the common belief that most accidents are

caused by improper and avoidable human error. Two investigations conducted during the course of the Department's study, however, indicate that most accidents are caused by environmental or personal factors which are external to the individual's conscious control and that punishment or its threat, therefore, is ineffective as a deterrent to deviant driving behavior.<sup>1</sup>

Analyzing the deterrent effects of various measures, including those of the tort liability system, one of these studies notes that existing deterrent measures fail to distinguish between two groups of drivers: those who are unwilling to conform to "normal" driving behavior and those who are willing but unable to conform.<sup>2</sup> The "won't conform" group consists of motorists who willfully choose to violate traffic laws -- who are able to modify their "bad" driving, but do not do so. Included in this group are those individuals who by virtue of their membership in deviant subgroups, are more likely to conform to deviant norms than to conventional driving norms (for example, certain youthful operators). For these relatively few drivers who deliberately choose to ignore safe driving practices, the threat of punishment will not, by itself, motivate careful driving behavior.

Motorists falling in the "can't conform" group attempt to exercise reasonable care when driving but, at times, are unable to do so.

"Some drivers are chronically unable to perform adequately, and all drivers have occasional non-

1. David Klein and Julian Waller, Causation, Culpability and Deterrence in Highway Crashes (1970), for the U.S. Department of Transportation (hereinafter cited as Causation, Culpability and Deterrence), and U.S. Department of Transportation, "The Human Factor in the Highway Environment: Normal and Deviant Behavior," Driver Behavior, pp. 111-198.
2. Causation, Culpability and Deterrence, p. 130.

deliberate lapses from adequate performance. The new and inexperienced driver, for example, regardless of his intentions and attitudes, will inevitably make errors . . . . Some of these errors will undoubtedly result in citations and crashes (as the disproportionate crash involvement of young drivers would seem to indicate), but to assume that these can be eliminated by deterrents is to assume also that the new driver is capable of a level of performance which in fact he has not yet achieved."<sup>3</sup>

Virtually all motorists are at times momentarily incapable of adequate performance because of the driving environment, their personal condition or some other factor beyond their control. Very few drivers, for example, are adequately trained to control their vehicles on icy surfaces. Where the driver is unable to avoid inadequate driving performance, deterrence is not likely to be effective since it demands behavior of which the driver is not capable.

Most accidents and violations are ascribed to driver error because it is the immediate, most obvious, cause. However, experts have concluded that the behavior involved in causation is itself the outcome of more remote causes.

"Driver error is only one of several factors that contribute to motor vehicle crashes. The individuals and groups who plan the vehicle and the highway environment also share responsibility for crashes and crash losses. No generally accepted criteria seem to exist by which causal factors may be ranked in importance. All that can be said in most cases is that if any one of the contributing factors had not been present, no crash would have occurred. Crashes may be more accurately viewed not as the result of

---

3. Ibid.

any single failure but as a result of the inability of the entire system to meet the demands placed upon it.<sup>4</sup>

Little has been done to identify or treat these underlying, more remote factors. For example:

"The scope of the tort law's inquiry into the cause of a particular crash is by established practice customarily limited to the behavior of the drivers, to the exclusion of other causal factors. The negligence law usually treats 'driver error' as both avoidable and unreasonable, and imposes liability pursuant to an objective standard to which all drivers are held. But a review of some of the available research indicates that a significant gap exists between the standard of behavior required by the negligence law and the average behavior normally exhibited by most drivers."<sup>5</sup>

As indicated in Table 23, doubts about the deterrent effect of the tort liability system are also raised by the general public's perception of the matter. When motorists were asked whether or not they believed that liability for damages caused by automobile accidents influences driving behavior, 58 percent replied negatively. Only 14 percent felt that liability does cause careful driving, with another 17 percent believing that it has some influence on driving. Respondents with some accident experience were even more likely than others to feel that liability has no effect on a person's driving, with nearly 70 percent of those involved in a personal injury accident holding this view.<sup>6</sup> Even those seriously injured in accidents tended to feel that potential liability does not affect how a person drives.

---

4. Driver Behavior, p. 189.

5. Ibid., p. 190.

6. U. S. Department of Transportation, Public Attitudes Toward Auto Insurance (1970), p. 67. (Hereinafter cited as Public Attitudes.)

TABLE 23  
OPINION OF THE GENERAL PUBLIC AND SERIOUSLY  
INJURED VICTIMS ABOUT THE INFLUENCE OF  
LIABILITY ON DRIVING BEHAVIOR

Opinion	General Public	Seriously Injured Victims
Liability causes careful driving	14%	21%
Liability has some influence	17	15
Liability makes no difference	58	53
Other	11	11
TOTAL	100%	100%

Source: Public Attitudes, p. 67, and U.S. Department of Transportation, Public Attitudes Supplement to the Economic Consequences of Automobile Accident Injuries (1970), p. 11. (Hereinafter cited as Public Attitudes Supplement.)

As noted earlier, the most significant bar to the deterrent effect of tort liability is the existence of liability insurance, i. e., since the potential tortfeasor may purchase immunity from any financial penalty arising out of a successful civil suit against him. Despite the arguments that the threats of insurance rate increases and policy cancellations for accident involvement deter negligent driving by insured motorists, the attitude survey of the general public indicates that the public is not responsive to such threats. Given a hypothetical accident in which their insurance company had to pay the other party more than \$200, nearly three-fourths of all respondents did not expect their company to raise rates and about 95 percent did not expect policy cancellation.<sup>7</sup>

7. Ibid., p. 113.

## 2. Utilization of Rehabilitation Techniques

It has been observed that "[s]ince the basic purpose of present day automobile liability insurance is protection of the policyholder, and since the basic principle of rehabilitation is service to the injured person, it is only that very special situation and that very special claimant in which the goals of rehabilitation and liability insurance coincide."<sup>8</sup>

Superficially, it would appear to be as much in the insurance company's interest as that of the victim and society as a whole that the victim be restored to his normal activities as quickly as possible. When a victim's losses are minimized by whatever means, the ultimate cost of a claim is likely to be lower. However, despite the seemingly clear interest of the company in rehabilitating automobile accident victims, obstacles to the optimum use of rehabilitation techniques in the settlement of auto tort liability cases still remain formidable, largely as a result of the adversary environment in which liability claims must be negotiated or adjudicated.

"Not only must fault and degree of disability be agreed to by opposing sides, but a bargain must be struck and dollar value assigned to the damages. Where the claimant has retained legal counsel, the settlement must cover his fees and expenses. The size of the attorney's fee is directly dependent on the size of the settlement, thus heightening the adversary nature of the settlement environment. Thus, considerable time, energy and expense must be devoted to controversy just when rehabilitation measures might most benefit the victim. The disabled person will usually be the focus of conflicting efforts toward the financial settlement of his 'case,' and here

8. John Henle, Rehabilitation of Auto Accident Victims (1970), for the U.S. Department of Transportation, pp. 18-19.

questions of fault and degree of disability press for immediate answer."<sup>9</sup>

The lost opportunities for rehabilitation were illustrated in the experience of seriously injured automobile accident victims. While a rehabilitation program was suggested to 11 percent of all victims,<sup>10</sup> the suggestion originated with insurance companies in only 2 percent of the cases.<sup>11</sup> Furthermore, about 30 percent of the victims did not participate in the rehabilitation program that was suggested.<sup>12</sup>

Not all auto accident victims require or can make optimum use of rehabilitation services, for example, those with only minor or no injuries. But the number who are potential candidates for formal rehabilitation programs, while small in relation to the total, would still appear to be quite sizeable. For example, in a recent survey about 7 percent of all claimants making successful auto bodily injury liability claims was found to suffer some kind of total or partial permanent impairment or disfigurement.<sup>13</sup>

When rehabilitation services are provided by the auto liability insurance system, they usually take one or more of the following forms:

- "1. the use of advance payments to cover the immediate expenses of the claimant, including, but not limited to, his property damage, hospital and other special damages;
2. the referral of the claimant to state rehabilitation agencies or other facilities; and
3. the use of claims or insurance company

9. Ibid., p. 13.

10. Economic Consequences, p. 377.

11. Ibid., p. 378.

12. Ibid., p. 379.

13. Automobile Personal Injury Claims, p. 19.

rehabilitation personnel working directly with the victim, his family, his physician and others to develop a plan of rehabilitation and to assist in its implementation and management."14

A relatively new insurance settlement technique of some significance to rehabilitation is that of advance payment, i. e., the partial payment of a claim in advance of final settlement. It is designed to provide timely compensation for the claimant's immediate expenses during his recovery period. Advance payments, to be most effective as a rehabilitative procedure, must be utilized with full knowledge of other benefits available to the victim. However, advance payments from automobile liability insurance are often made without regard to collateral benefit sources. The availability of such other sources may tend, in many cases, to reinforce the claimant's willingness to pursue an uncooperative, adversary approach to the liability insurer and hence to deter him from entering rehabilitation promptly.

In combination with advance payments, referral of victims to state rehabilitation agencies can be particularly effective. However, the state-federal rehabilitation program remains a major, virtually unused resource which has scarcely been tapped by the private auto insurance industry. A close and cooperative working relationship between claims representatives and claimants is perhaps the most effective but least often employed type of insurance-supported rehabilitation under the present tort liability system. This may be due, in part, to the pressures on adjusters for speedy closings of claims files. But even where insurance companies have sought to apply rehabilitation techniques to the settlement of third-party bodily injury claims, numerous obstacles remain, not the least of which is the credibility of the liability insurer's motives in the eyes of its third-party claimant.

---

14. Rehabilitation of Auto Accident Victims, p. 19.

#### D. Institutional Strains Created by the Reparations System

The existing auto accident reparations system has created or aggravated a host of stresses or strains for other institutions.

##### 1. Stresses Upon the Insuring Public

Perhaps the most pervasive influence upon automobile insurance as a public issue in recent years has been inflation. Indeed, between 1960 and 1970, the Consumer Price Index (CPI) for automobile insurance rose 63 percent, slightly more than twice as much as the CPI for all items.<sup>1</sup> As great as this rise is, it does not fully reflect the impact of rising auto insurance prices to the average household. During the 1960's, the number of multi-car families rose from 15 percent to 27 percent of all car-owning families,<sup>2</sup> with the result that auto insurance premiums became a noticeably more visible factor in the family budget.

This rise in the cost of automobile insurance was caused in large part by cost increases in the products and services which insurance pays for -- medical and hospital bills, crash repair services, legal services, wage and salary replacement, replacement of totally wrecked or stolen vehicles, etc. Doctors' fees and hospital daily service charges rose 58 percent and 155 percent, respectively, over the past decade, and there is good reason to believe that because of the nature of accident injuries, medical and doctor costs in this particular area rose even faster. Similarly, although the CPI for

1. Consumer Price Indexes are constructed and published by the U.S. Department of Labor, Bureau of Labor Statistics.
2. U.S. Department of Commerce, Statistical Abstract of the United States (1970), p. 546.

auto repairs and maintenance increased about as much as the CPI for all items, both available evidence and common sense argue that crash repair costs rose much faster during the past decade. (The Bureau of Labor Statistics does not collect data on crash repair costs.) Wage and salary replacement costs have paralleled the rise in personal income generally -- average weekly production worker earnings in the private sector, for example, grew 48 percent from 1960 to 1970.<sup>3</sup>

The costs of providing the insurance service, itself, have also increased very steeply, although not quite as fast as the external costs. Indeed, the insurance company's expense portion of the auto insurance premium dollar has declined from about 40.8 percent to about 39.0 percent since 1960.<sup>4</sup> However, it would probably be wrong to infer that this market decline in the expense ratio reflects any significant gain in the overall efficiency of the reparations system inasmuch as the CPI for auto insurance has been rising at double the rate of the CPI for all items.

Regardless of the reasons for rising insurance prices, the fact that they are rising cannot be ignored, nor can the widespread public dissatisfaction which has accompanied it. While all insured motorists are required to pay into the insurance system, not all realize tangible benefits from it. Understandably, those who are lucky enough not to have been involved in accidents are also likely to become bitterly resentful of increasing insurance costs. Also, understandably, they will feel that only those who cause or are most likely to cause accidents (traffic law violators) should pay such increased costs. Setting aside for the moment the fallacy of the assumption that most accidents are caused by a small

3. Earnings data are collected and published by the U. S. Department of Labor, Bureau of Labor Statistics.

4. New York Insurance Department, Loss and Expense Ratios, Insurance Expense Exhibits (unaudited).

percentage of "bad" drivers who alone have difficulty in obtaining insurance voluntarily, it is clear that when the cost of insurance reaches the point where it strains a driver's ability to pay, he may either drive without insurance or opt for deficient coverage (as a means of effecting premium savings) to the detriment of his potential accident victim, or cease to drive and perhaps thereby impair his ability to earn a living. In a similar vein, drivers involved in accidents may be encouraged under merit or demerit rating plans to abstain from reporting accidents to their insurers and thereby risk a denial of coverage because of a policy breach. "Policyholder reluctance to report an accident appears to arise from a fear that his possible liability will have an adverse effect on the price and availability of automobile insurance to him in the next period."<sup>5</sup>

## 2. Stresses Upon the Insurance Industry

Combined with, and influenced by, the increased demand for insurance -- stemming in large part from more stringent financial responsibility measures, a growing population, increasing numbers of vehicles and a greater use thereof, and the introduction of more liberal concepts of legal liability and damages -- the inflationary spiral has been the overriding reason for widespread and frequently severe underwriting losses of automobile insurers and, consequently, for the insurance price and availability problems that have followed in the wake of unprofitability.

The insurance product is perhaps unique in that its cost to the producer can only be ascertained long after it has been sold and used. Thus, actual loss experience, which largely determines the loss component of the

- 
5. U. S. Department of Transportation, An Analysis of Complaints in Selected Automobile Insurance Markets (1970), p. 25. (Hereinafter cited as An Analysis of Complaints.)

product's price, will be established only after the last claim under the last policy issued during a given period has been settled. Therefore, in structuring its rates, the automobile liability insurer or rating organization must estimate not only what its losses will be for accidents covered by policies issued at some future time, but also what those loss costs may grow to when the claims are actually settled. Obviously, if the effects of inflation cannot be predicted with reasonable accuracy, then the rates may turn out to be disastrously inadequate.

The pricing of the insurance product is made immensely more complicated by the fact that under most State rate regulatory laws the insurer or rating organization proposing new rates must first secure the approval of the appropriate State insurance regulatory official. During this process, however, controversies may arise between regulators and insurers over the so-called "development" and "trend" factors which insurers use to project past loss experience into a forecast of future loss experience. Disagreements are particularly likely to occur when past experience indicates an acceptable loss ratio at current rate levels, but an excessive loss ratio when modified by the insurer's development and trend factors.

Clearly, reasonable minds can and will differ about what the future will bring; and even if all can agree that loss experience will trend upward, there may well be disagreement about the extent. Where the regulator declines to accept, in full or in part, the insurer's gloomy predictions of the future, the courts are unlikely to overturn his decision unless it is manifestly arbitrary, capricious and without any evidence to sustain it. It is scarcely a matter of wonder, then, that insurers, their associations and rating organizations are virtually unanimous in their denunciation of prior approval rate regulatory laws and have urged that they be replaced with a system that relies on competition alone to keep rates at reasonable levels.

### 3. Pressures Affecting the Residual Market

When an insurance company becomes convinced that the rates it is allowed to charge are inadequate to cover the expected losses of a specific group of its insureds, it understandably becomes more selective in accepting new applicants and attempts to drop those policyholders for whom the rates have become inadequate. As this attitude spreads to more insurers, increasing numbers of drivers find insurance unavailable in the voluntary market and are forced to seek coverage with assigned risk plans or the high-risk (non-standard) market. It is understandable, therefore, that a regulator, torn between granting unpopular rate increases and the market constrictions likely to follow the denial of requests for rate increases, might well opt for abandonment of the prior approval type of rate regulatory law -- particularly when there is hope that once "adequate" rate levels are attained, price competition among insurers will work effectively to keep rates at proper levels.

Competition, itself, apart from considerations of adequate rate levels, engenders market problems that increase the population of the assigned risk plans and the non-standard insurance market. It has been observed:

"The hard-to-place [driver] problem is an integral part of the competitive functioning of the automobile insurance industry. It is a by-product of underwriting competition. Despite a complex objective rating scheme, insurers do not find it profitable to grant coverage to all applicants. Even within the most highly developed rating classification there are still some drivers who have distinctly higher than average loss potential. Insofar as the rating system fails to account for these differences, there is an opportunity for insurers to increase their profits through selective underwriting. The result of this is that some applicants are rejected. This residual group of rejected drivers is likely to become larger as

competition becomes more intense. The more insurers' profit margins are under pressure, whether for competitive or regulatory reasons, the greater their efforts to sort out applicants with higher than average loss potential. Cancellations and refusals to renew are manifestations of these efforts. . . . The existence of a substandard or hard-to-place market appears to be inevitable in the context of a fully competitive insurance system. Only by placing restrictions on competition through underwriting could such a residual market be reduced in size or eliminated. Because risk variations in the driving population exceed the scope of any feasible rate classification systems, insurers will have a profit incentive to reject the poorer risks within each class. Thus, the substandard market is not based on unusual or temporary factors in the insurance industry; rather, it is a basic result of competition. "6

In competing for new business, only the better risks are solicited:

"Competition and regulation together have caused insurers to intensify their search for preferred risks. As a consequence, underwriting practices have become progressively more refined. This refinement has led to an increasing degree of insurance price variability designed to reflect more precisely loss variations among motorists. Insurance classification systems can be viewed as a blend of risk differentiation and risk pooling. A highly detailed classification system places the greatest weight on differentiation -- a driver pays that premium which reflects his loss probability as of that time and place. As his age, driving habits, or location changes, his premium will change, perhaps drastically. "7

6. Insurance Accessibility, pp. 1 and 22.

7. Ibid., p. 21.

While the eight to ten percent<sup>8</sup> of insured motorists who are relegated to the involuntary market do not represent a high proportion of the total, translated into absolute terms against a background of about 100 million vehicles, the true significance of the hard-to-place driver problem can be seen. Originally conceived as the solution to the insurance availability problem, assigned risk plans currently serve no more than half of the non-standard market.<sup>9</sup> Many hard-to-place drivers, desiring broader coverages and higher liability limits than those provided by the plans, have chosen to insure with high-risk companies. Unfortunately, some of these motorists have been insured by high-risk companies that later became insolvent.

In retrospect, it might be easy to condemn State regulators for permitting some of the high-risk insurers to operate, or to operate as long as they did, before their financial collapse. Such condemnation, however, would overlook the pressures upon regulators to take the optimistic view during times when some motorists were unable to purchase insurance in the voluntary market and rebelled at being consigned to the assigned risk plan (i. e., because of the social stigma attached to it), or could not use such plans because of ineligibility or the need for higher limits or other coverages.

Over and above the high rate of insolvencies, policies written by high-risk insurers have been noted for coverage gaps, restrictive provisions and arbitrary or capricious denials of liability. The cruelest and most intolerable consequences of insurer insolvencies and coverage deficiencies are borne by the innocent accident victim who is deprived of reparation for his injuries by circumstances completely beyond his control. However meticulous and deliberate the accident victim may have been in choosing his own insurer under the tort liability

8. Ibid., p. 2.

9. Ibid.

system, he cannot select the tortfeasor nor the tortfeasor's insurer. In the case of small claims, at least, the accident victim is usually without remedy as a practical matter:

"For small claims, the existence of formal court procedures is an empty alternative for enforcing reparation by a hesitant insurer. With court delays in excess of five years in some major metropolitan areas, and with the expenses inherent in utilizing the courts, application for judicial enforcement of small obligations may be precluded."<sup>10</sup>

Ruinous financial losses also may be sustained by policyholders left unprotected by an insolvency or coverage gap.

The understandable inclination of a third-party claimant confronted by a seemingly capricious denial of liability by the wrongdoer's insurer is to seek relief from the complaints division of his State insurance regulatory agency; but the fact is that complaints divisions cannot act as formal judicial bodies since they lack legal authority to make binding determinations of law or fact and cannot assume the power and functions of the judiciary.<sup>11</sup>

The change of an insured's status from that of a "preferred risk" to that of an undesirable or "high" risk may be both precipitate and costly, as, for example, when a youthful member of the family attains driving age or when a chargeable accident has been incurred. In most cases, an insurer, other than a high-risk insurer, will not voluntarily sell insurance to a person who has been

<sup>10</sup> An Analysis of Complaints, p. 15.

<sup>11</sup> In this connection, it may be noted that California, which has received widespread praise for the excellence of its insurance regulation, does not even entertain complaints from third-party victims of automobile accidents.

cancelled or refused renewal by another company. Therefore, when a driver discloses on his application that he has been previously cancelled or refused renewal, his rejection, and consequently his need to resort to the assigned risk plan or the non-standard market, is almost certain -- whatever the reason for the cancellation or nonrenewal may have been. This, to a great extent, accounts for the numbers of clean risks in assigned risk plans.

No one would argue, of course, that motorists who consistently violate the laws and endanger lives should not be eliminated from the highways; but it could be argued that the decision to remove such motorists should be made by government and not indirectly through a pricing mechanism operated by a private industry, particularly where the driver's only offense has been his inability to obtain insurance in the voluntary market. The following summary places the matter in perspective and draws attention to the public policy implication of insurance pricing:

" . . . [T]he hard-to-place problem is not a temporary phenomenon in the context of the automobile insurance industry. It is an inevitable but undesirable consequence of the competitive process. If we are to allow competition in underwriting to continue, because of the social nature of automobile insurance, we must devise alternative means to serve the hard-to-place driver. . . . [A] major social decision will have to be made, particularly with respect to insurance pricing. Insurance costs are of a magnitude that ability to pay cannot be ignored. Given its compulsory nature, considerations of social equity must be featured."<sup>12</sup>

Even those who advocate substantial retention of the tort liability reparations system concede that some

---

<sup>12</sup>. Insurance Accessibility, p. 85.

reforms are needed, and these have their own important cost implications. Thus, for example, the American Bar Association has recommended such changes as universal, compulsory liability insurance, substitution of comparative negligence for contributory negligence, elimination of immunities such as the charitable institution rule and inter-spousal and intra-familial immunities, and the removal of statutory limitations on damages in wrongful death cases.<sup>13</sup> The Defense Research Institute and many insurers and their associations have offered similar or comparable reforms as alternatives to a more far-reaching restructuring of the system. The important point here is that whatever the merits of such changes may be otherwise, some or all would act to increase still further the cost of automobile insurance.

#### 4. Stresses Upon Law and Legal Institutions

The truth of the maxim that "justice delayed is justice denied" is nowhere more apparent than it is with automobile accident cases. The combination of pressing financial obligations and the prospect of long delay in the trial of the issue may force the injured accident victim into a settlement of his claim which is totally incommensurate with his economic loss and the liability of the wrongdoer.

Of the more than 220,000 lawsuits estimated to have been filed in 1968 as the result of motor vehicle accidents, more than half required in excess of two years to reach termination.<sup>14</sup> The true dimensions of the problem may, perhaps, be better seen from a geographical perspective. In small rural counties such as Pittsylvania, Virginia, or Simpson, Mississippi, for example, half of the suits filed appear to have been disposed of within four or six months. In large urban counties such as New York, Los Angeles or Essex (Newark), it may require 48, 26 or 30 months for half of the cases to

13. See, ABA Report.

14. Automobile Accident Litigation, p. 7.

terminate and 70, 56 or 36 months to dispose of 90 percent of the cases.<sup>15</sup>

Much of this delay can be traced to the adversary nature of the settlement process under the tort liability system and the pervasive reliance on lump sum payments to the successful litigant or claimant. Meaningful settlement negotiations cannot take place until the claimant has had a chance to assess the extent of his losses and injuries; in the case of serious injuries some lengthy period may have to elapse before this assessment can be made. Normally, a suit will not be filed until the extent or permanency of the injury has been finally determined or until the statute of limitations threatens to bar the suit. For this reason, suit filings tend to cluster around the expiration of the time provided by the statute of limitations.<sup>16</sup>

Even though it was found that only 7 percent of the suits filed were terminated through verdict and judgment,<sup>17</sup> it is not true that only relatively few cases are affected by court delay. Rather, it seems clear that settlements tend to be reached as the trial date nears. "The fact that delay from filing to termination for the median of all terminated cases closely resembles the delay for the median of all tried cases supports the thesis that establishing a trial date determines when a case will terminate whether it goes to trial or not."<sup>18</sup> The indicated tendency toward "settling on the court house steps" may well be explained by the fact that of the cases examined 71 percent were won by plaintiffs.<sup>19</sup>

The burden that accident litigation places on the judiciary is indicated by the finding that:

---

15. Ibid., pp. 88-248.

16. Ibid., pp. 26-33.

17. Ibid., p. 8.

18. Ibid., p. 33.

19. Ibid., p. 37.

"Motor vehicle accident litigation in the court system was estimated to occupy 17 percent of the system's available resources. The court costs of administering accident litigation was estimated at \$133.7 million considering employee and operating expenses in both state and federal courts. Impact of motor vehicle accident litigation on the courts varies widely among states (from 3% to 46%)."<sup>20</sup>

It should be noted that this assessment relates only to the tort liability aspects of the system and does not consider the impact of the considerable volume of litigation which stems from coverage disputes and issues.<sup>21</sup>

Criticism of the auto accident reparations system growing out of court delays has attained such proportions that compulsory arbitration of smaller cases is being widely advocated even though advocates generally oppose any change which would impinge upon the right of jury trial. The Philadelphia Plan, for example, has been widely studied as a model. This Plan compels the arbitration of claims involving less than \$3,000 but allows a

20. Ibid., p. 7.

21. These include: declaratory judgment actions relating to which, if either, duplicating policy applies or whether one is primary and the other excess; rescission actions brought by insurers to void policies because of alleged misrepresentations of the applicant in his application for insurance; actions for the interpretation of exclusionary provisions in liability policies, and for a determination whether such exclusions offend the letter or spirit of financial responsibility laws; controversies over "offsets" and "escape" clauses in uninsured motorist insurance policies and endorsements, with particular respect to whether or not such clauses are void as being in conflict with statutory provisions mandating uninsured motorist insurance as a part of every liability policy, and similar coverage questions.

losing party to obtain a trial de novo on payment of arbitration costs and certification that the appeal to the court is not merely for the purpose of delay. However, the American Bar Association has cautioned against depriving the litigant of the right of trial by jury by penalizing court appeals.<sup>22</sup>

Those who recommend such "evolutionary" reforms as elimination of the inter-spousal, intra-familial, charitable and governmental immunities are merely echoing pronouncements already made by many of the courts in judicially striking down these immunities. That the court's action in terminating such immunities is prompted by the desire to afford reparation to the victim under the fault-liability insurance reparations system is implicit, and sometimes explicit.<sup>23</sup>

The Illinois Supreme Court has well articulated the role of automobile liability insurance as a vital component of the tort reparations system in holding that failure

---

22. ABA Report, p. 61, where the Committee concludes:

"In these [plaintiff v. defendant] situations we believe that the courts should not abdicate their usual role. The emphasis should be on efforts to improve their ability to do their work on time, to make certain that litigants have easy access to the courts for the resolution of their controversies by professional judges, and to preserve the right of trial by jury, in fact and in theory." The Report suggests that the panels are pro-plaintiff and that "plaintiff's lawyers" may outnumber "defendant's lawyers" by 30 to 1.

23. For example, in Silesky v. Kelman, 161 N. W. 2d 631 (Minn. 1968) where the court said: "While the existence of liability insurance does not create liability, its presence is of considerable significance in the case at bar. To persist in adherence to family harmony and parental discipline and control arguments when there is automobile liability insurance involved is in our view unrealistic."

of the insured to give the required notice of accident did not vitiate coverage where the injured person himself gave such notice to the insurer. The court said:

"Automobile insurance has taken an important position in the modern world. It is no longer a private contract merely between two parties. The greater part of litigation in our trial courts is concerned with claims arising out of property damage, personal injury or death caused by operation of motor vehicles. The legislatures of all of our States have recognized the hazards and perils daily encountered and as a result have enacted various pieces of legislation aimed at protection of the injured party. Financial Responsibility Acts, Unsatisfied Judgment Fund Acts and other similar laws are direct results of this concern. That the general welfare is promoted by such laws can be little doubted. Government and the general public have an understandable interest in the problem. Many persons injured and disabled from automobile accidents would become public charges were it not for financial assistance received from the insurance companies."<sup>24</sup>

Courts have regularly rested the moral and legal justification of compulsory insurance and financial responsibility laws upon the danger that innocent accident victims might, in the absence of reparation by the wrongdoer's insurer, become a burden upon society. The logic of this justification is quite apparent since it would seem that government would lack the right, and possibly the power, to require a citizen to purchase automobile liability insurance merely to protect his personal estate, particularly where no attempt is made to require protection of that estate from liabilities arising from activities other than operating a motor vehicle. However, viewing the matter in terms of society's interest in preventing a

<sup>24</sup>Simmons v. Iowa Mutual Casualty Co., 121 N. E. 2d 509 (1954).

victim from becoming a public charge, it would appear that the at-fault victim and his dependents are quite as likely to become public charges as the innocent victim.

Widely divergent, even antithetical, public policies are displayed by different jurisdictions with respect to allowing the alleged wrongdoer's insurer to be named as a defendant and the real party in interest in a liability suit against a putative wrongdoer. In the overwhelming majority of States, the defendant's insurer may not be named or joined as a defendant in the principal suit. Indeed, it is usually deemed prejudicial error, requiring a mistrial or reversal, if mention of liability insurance is injected into the trial by or in behalf of the injured plaintiff. This rule, of course, is based upon the probability that the jury, sympathetic to the injured person's plight and the insurer's wealth, would find for the injured plaintiff irrespective of the defendant's liability or lack of it.

In those States that uphold the "no-action" clause of the insurer's policy, the claimant is not entitled to bring action against the insurer unless final judgment has been secured against the insured, and unless the insured has complied with all of the terms of the policy. The result is, of course, that the third-party claimant is, until he obtains a judgment, a stranger to the insurance contract and to the insurer. If the insurer ignores the claimant, is dilatory in its handling of the claim, or fails to make an adequate, or any, offer of settlement, it violates neither a contractual nor a statutory obligation owed to the claimant. Obviously, in the overwhelming majority of cases, the insurer expeditiously investigates the claim and negotiates a settlement because it is good business to do so. There are indications, however, that some high-risk insurers have taken advantage of this absence of a legal obligation and have abused accident victims.<sup>25</sup>

---

25. An Analysis of Complaints, p. 59: ". . . [T]he conclusion that the behavior of nonstandard insurers tends

In two States, Louisiana and Wisconsin, statutes explicitly recognize the right of the injured plaintiff to name or join the liability insurer as a defendant in the principal suit. In such jurisdictions, of course, the "no-action" clause is void as being contrary to public policy. Recently, the Supreme Court of Florida recognized the plaintiff's right to join the liability insurer as a defendant even though Florida does not have a "direct action" statute. In so concluding, the Court said:

"It cannot be disputed that securance of liability insurance coverage protection for the operation of a motor vehicle . . . is an act undertaken by the insured with the intent of providing a ready means of discharging his obligations that may accrue to a member or members of the public as a result of his negligent operation of a motor vehicle on the public streets and highways of this state. Viewed in this light, we think there exists sufficient reasons to raise by operation of law the intent to benefit injured third parties and thus to render motor vehicle liability insurance amenable to the third party doctrine."<sup>26</sup>

It has been cogently observed that:

"When the negligence principle was taking root the question of tort liability was a matter between individuals. When an accident caused loss, the law saw only two possible ways to deal with it: let it lie where it had fallen, or shift it to the party who had caused the loss . . . [T]he possibility of broad distribution of the loss according to insurance principles had not yet been thought of in this context."<sup>27</sup>

---

to lead to greater than normal dissatisfaction on the part of claimants is difficult to avoid."

26. Shingleton v. Bussey, 223 So.2d 713 (1969).

27. Fleming James, op. cit., p. 45.

Legal principles, enjoying complete logical and moral justification in the environment of a tort action, can make an expensive shambles of a reparations system based upon insurance principles. The collateral source rule on damages aptly illustrates the point. The collateral source rule prevents the negligent defendant from decreasing the damages recoverable by the plaintiff by showing that the latter recovered his losses from some other benefit source, the theory being that it would be unjust to allow the wrongdoer to reap the reward of the plaintiff's bargain and thus to escape the consequence of his own wrongdoing. In the context of a reparations system based upon insurance principles, the rule lends itself to duplication of recovery resulting in the excessive compensation of minor injuries and excessive costs for the system.

Conversely, the impact of the auto accident reparations system on the law also can be illustrated by the collateral source rule. Strict application of the collateral source principle might prevent a liability insurer which has paid the medical expenses of its insured's guest passenger under the medical payments insurance (a contractual coverage) from precluding the same claimant from claiming those same medical expenses in a tort action against the host driver. Some courts have applied the rule strictly. In one case, the New Jersey Supreme Court said:

" . . . [W]e see no reason to deviate from the general rule insofar as the payments for medical and hospital expenses are concerned merely because the [tortfeasor] husband paid the premiums. This does not affect the common law rule that a tortfeasor may not benefit by payments to the injured party from collateral sources. Plaintiff was the direct contractual beneficiary of these policies which vested her with a property right."<sup>28</sup>

<sup>28</sup>. Long v. Landy, 171 A.2d 1 (N.J. 1961). Also see Edmondson v. Keller, 401 S.W.2d 718 (Texas 1966).

Perhaps a majority of the courts have held, however, that where the medical expenses have been paid by the host driver's liability insurer under the medical payments coverage, the situation is essentially the same as though payment of such expenses had been made by the wrongdoer himself and, therefore, the collateral source doctrine has no applicability.<sup>29</sup>

Finally, in considering the impact of the fault' reparations system upon the law and legal institutions, note must be taken of the concern which scholars and others have expressed about the growing disrespect for the courts and the law. As one scholar put it:

"An undesirable by-product of this wastefulness is that it encourages exaggeration<sup>30</sup> of injuries suffered,

29. For example, see Tart v. Register, 125 S.E.2d 754 (N.C. 1962); Yarrington v. Thornburgh, 205 A.2d 1 (Del. 1964). By definition, the collateral source doctrine can only apply where the payment was from a source independent of the wrongdoer.

30. Aside from any tendency of the system to encourage the exaggeration of injury and the prolongation of disability, there are disturbing indications that complete physical recovery may itself be jeopardized by the pendency of suit. See Crawford Morris, "Response to Ribicoff: Malpractice Suit v. Patient Care," Insurance Counsel Journal (April 1970), p. 224, where the author writes: ". . . [T]here is the known medical fact that patients who become plaintiffs in any type of litigation seeking money damages for their injuries simply do not recover as completely or as quickly as similar patients not embroiled in litigation." Mr. Morris quotes Dr. Wallace Duncan, a renowned orthopedic surgeon as saying: "I despair to undertake the treatment of any patient who has litigation pending -- they simply do not respond to therapy as they should and do not recover as quickly nor as completely as similar patients who do not have such litigation pending."

and even fraud and perjury, in order to ensure that the amount which actually reaches the victim is large enough to compensate him for his real losses."31

In somewhat the same vein, Dean Prosser has stated:

"Upon such evidence, a jury of twelve inexperienced citizens, called away from their other business if they have any, are invited to retire and make the best guess they can as to whether the defendant, the plaintiff, or both were 'negligent' which is itself a wobbly and uncertain standard based upon the supposed mental processes of a hypothetical and non-existent reasonable man. European lawyers view the whole thing with amazement; and the extent to which it has damaged the courts and the legal profession by bringing the law and its administration into public disrepute can only be guessed."32

31. Joseph W. Bishop, "The Validity Under the Constitution of the United States of Basic Protection Insurance and Similar Proposals for the Reform of the System of Compensating Victims of Automobile Accidents," Constitutional Problems in Automobile Accident Compensation Reform (1970), U.S. Department of Transportation, pp. 37-38.
32. William Prosser, op. cit., p. 580.

**E. Public Opinion: Complaints and Attitudes about Automobile Insurance**

Increasingly vocal public concern over the operation of the automobile insurance system has been a major force in attracting the interest of government at all levels. Indeed, public concern led to the creation of the Department of Transportation's Automobile Insurance and Compensation Study.

Any institution that directly and substantially affects the lives of three out of every four American families is bound to generate at least some consumer dissatisfaction. During the course of the Study, the Department became a natural collection point for citizen complaint letters about auto insurance. A selection of these letters were sent to the companies involved for comment. The complainants were contacted and asked for additional information.<sup>1</sup>

It is an indication of how strongly these complainants felt that 80 percent of them responded even though they were advised that the Department of Transportation had no power to assist them.<sup>2</sup> About 40 percent of these complainants considered their complaints still open, despite the fact that many were concerned with matters several years old. Only 26 percent of those that believed their complaints were resolved felt justice had been done.

Although no formal adjudications of the facts in dispute could be made, many of these complaints appeared to be unwarranted in the context of the present insurance system. Others reflected gross misconceptions about the operation of the system or the respective rights of insureds, claimants or insurance companies. Many of the complaints, however, did appear to be justified. In some cases, the company admitted error and frequently

1. Public Attitudes, pp. 137-266.

2. Ibid., p. 140.

gave evidence of going to considerable lengths to rectify it. In still other cases, neither the company nor the complainant appeared, either in a legal or moral sense, to be completely "right."

One study of consumer complaints about automobile insurance indicated that non-standard (i. e., high-risk) companies are responsible for a disproportionate number of complaints. This study, based on the experience of four jurisdictions -- California, Illinois, West Virginia and the District of Columbia -- revealed that while high-risk companies had from 5 to 11 percent of the market, their share of complaints ranged from 14 to 48 percent of the total analyzed.<sup>3</sup> While the distribution of complaints by type varied from one jurisdiction to another, delay of claims payment, disputes of the value of the loss and denial of coverage accounted for slightly over 70 percent of all complaints.<sup>4</sup>

One of the Department's principal concerns was to find out what the public thinks and feels about the present automobile insurance system. To this end, two large-scale surveys were conducted, one of the general public and the other of persons known to have been seriously injured in automobile accidents.<sup>5</sup> In general, these surveys indicate that the public has mixed attitudes about the performance of various aspects of the system, is generally ill-informed about the current system, and, on the whole, shows an openness to change when made aware of alternatives to the present system.

When respondents to the survey of the general public were asked to mention what they felt were the good and bad points of auto insurance, most mentioned both kinds of features. However, while most references to desirable features were couched in the form of generalities,

3. Insurance Accessibility, p. 70.

4. An Analysis of Complaints, p. 10.

5. See, Public Attitudes and Public Attitudes Supplement.

references to undesirable features tended to be specific, relating to rising costs, fear of cancellation and delays in the settlement of claims.<sup>6</sup> Only 8 percent of the general public could think of more than one favorable point and 17 percent were unable to think of any; however, 27 percent mentioned two or more unfavorable features while only 12 percent could think of none. The most frequently stated undesirable aspect of auto insurance was high or rising cost (44 percent of all respondents), policy cancellation or nonrenewal (11 percent), and delay in claims processing (10 percent). Protection against claims by others or against large loss (37 percent) -- a function which perhaps could be equally well provided by alternative systems -- and good service (12 percent) were most frequently mentioned as good points.

A motorist's level of satisfaction with the system might logically be expected to be related to his experience with it. As reflected by an Index of Satisfaction -- a measure combining the responses to several questions<sup>7</sup> -- respondents with personal injury accident experience during the two-year period prior to the interview, either personally or by association with another family member, tended to be less satisfied than respondents with property damage or no accident experience (Table 24). One likely explanation is the widespread possession of collision insurance that pays auto damage costs without regard to fault and also facilitates third-party recovery. Indeed, the Index shows that the level of satisfaction for persons with first-party claims is significantly greater than that of third-party claimants (Table 25).

6. Public Attitudes, pp. 24-25.

7. For a discussion on the Index of Satisfaction, see Public Attitudes, pp. 15-31.

**TABLE 24**  
**INDEX OF SATISFACTION OF THE GENERAL PUBLIC**  
**WITH AUTO INSURANCE BY TYPE OF AUTO ACCIDENT**  
 (Percentage distribution of car-owning families)

Level of Satisfaction	Type of Accident		
	Personal Injury	Property Damage Only	No Accident
Very satisfied	18%	24%	21%
Generally and somewhat satisfied, and pro-con	53	52	59
Dissatisfied	29	24	20
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Public Attitudes, p. 109.

**TABLE 25**  
**INDEX OF SATISFACTION OF THE GENERAL PUBLIC**  
**WITH AUTO INSURANCE BY TYPE OF INSURANCE CLAIM**  
 (Percentage distribution of car-owning families with accidents)

Level of Satisfaction	Type of Claim	
	First-Party	Third-Party
Very satisfied	31%	20%
Generally and somewhat satisfied, and pro-con	47	53
Dissatisfied	22	27
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

Source: Public Attitudes, p. 110.

The Index also reflects the much greater degree of dissatisfaction with auto insurance on the part of motorists living in the central cities of the twelve largest Standard Metropolitan Statistical Areas (SMSA's) as compared to those living in all other sections of the country (Table 26). The relatively high cost of automobile insurance protection in urban areas, the problem of court delay and the greater difficulty in obtaining and keeping insurance are all reasonable explanations for the differences.

TABLE 26  
INDEX OF SATISFACTION OF THE GENERAL PUBLIC  
WITH AUTO INSURANCE BY DEGREE OF URBANIZATION  
(Percentage distribution of car-owning families)

Level of Satisfaction	Respondent's Residence	
	12 Largest SMSA's	Other Areas
Very satisfied	13%	22%
Generally and somewhat satisfied, and pro-con	49	58
Dissatisfied	38	20
TOTAL	100%	100%

Source: Public Attitudes, p. 112.

When asked whether they had ever personally experienced cancellation or nonrenewal, 14 percent of the car-owning families replied affirmatively.<sup>8</sup> Excluding those motorists who were themselves cancelled, more than half of all respondents, particularly youthful motorists, had heard of others who had been cancelled. Most respondents who were cancelled or denied renewal purchased other insurance, but low income people were

8. Ibid., p. 35.

more likely than others to go without insurance after a cancellation.<sup>9</sup>

One of the more important observations to be drawn from this survey of the general public was that a substantial number of motorists do not clearly understand how the fault system is intended to work. Nearly 30 percent of all respondents believed that they could collect from a third-party insurer when partly at fault in an accident with another driver.<sup>10</sup> Another 14 percent did not know whether they could or could not collect. Those with significant direct recent experience with the system, in this case seriously injured victims, showed a better understanding of the fault doctrine with only 21 percent replying incorrectly and 12 percent not knowing.<sup>11</sup>

A comparison of the seriously injured victims' responses with those of the general car-owning public to a series of attitudinal questions on the reasons for carrying automobile insurance indicates that the former tend to attach greater relative importance to all reasons.<sup>12</sup> One of the largest differences between the two groups concerned their feelings about compensation for "pain and suffering" caused by an accident. Sixty-four percent of the seriously injured victims considered this a "very important" reason for carrying auto insurance, while only 46 percent of the general public expressed the same attitude.<sup>13</sup> Fifteen percent of the general public thought it was "not at all important," but only 7 percent of the seriously injured victims agreed.

As the interview developed and respondents gained additional knowledge of the present system and a possible

9. Ibid., p. 37.

10. Ibid., pp. 71-72.

11. Public Attitudes Supplement, p. 36.

12. Public Attitudes, pp. 63-65 and Public Attitudes Supplement, pp. 7-9.

13. Public Attitudes Supplement, p. 8.

alternative to it (i. e. , no-fault insurance), the general public tended to express less satisfaction with liability insurance and tended to favor a no-fault system (Table 27). When first asked whether based on their experience they were or were not satisfied with auto insurance, 65 percent of respondents replied with some degree of satisfaction while 22 percent were dissatisfied. Later, after a brief description of auto liability insurance, the level of dissatisfaction increased; 56 percent indicated satisfaction while 28 percent displayed dissatisfaction. Respondents were then given a brief description of an alternative, no-fault insurance system and were asked for their reaction. The pattern of responses to this question very closely matched that relating to the evaluation of the liability system. In both cases close to 60 percent replied favorably to what had been described. Either respondents changed their opinion upon learning about a no-fault alternative or else they did not see any contradiction in approving two different insurance systems.

TABLE 27  
ATTITUDES OF THE GENERAL PUBLIC TOWARD  
FAULT AND NO-FAULT INSURANCE  
(Percentage of car-owning families)

Level of Satisfaction	Question Relating to:		
	Experience with Fault System	Evaluation of Fault System	Evaluation of No-fault System
Very, generally and somewhat satisfied	65%	56%	57%
Pro-con	6	4	2
Generally dissatisfied	22	28	30
Other	7	12	11
TOTAL	100%	100%	100%

Source: Public Attitudes, pp. 18 and 73.

The views of seriously injured victims to these same three questions generally paralleled those of the general population, tending to be somewhat more extreme (Table 28). On the question relating to experience with auto insurance, seriously injured victims were clearly less satisfied than the general public, with only 50 percent -- compared to 65 percent -- voicing satisfaction. Almost half (46 percent) of seriously injured victims expressed some dissatisfaction with the present system. One-third of those dissatisfied expressed only moderate dissatisfaction but the other two-thirds answered an unqualified "dissatisfied."

TABLE 28  
ATTITUDES OF SERIOUSLY INJURED ACCIDENT  
VICTIMS TOWARD FAULT AND NO-FAULT INSURANCE

Level of Satisfaction	Question Relating to:		
	Experience with Fault System	Evaluation of Fault System	Evaluation of No-fault System
Very, generally and somewhat satisfied	50%	48%	62%
Pro-con	15	13	5
Generally dissatisfied	31	25	22
Other	4	13	11
TOTAL*	100%	100%	100%

\*Detail may not add to total due to rounding.

Source: Public Attitudes Supplement, pp. 5, 13 and 15.

As in the case of the general public, a majority of seriously injured auto accident victims (62 percent) evaluated a brief description of no-fault insurance favorably; and fewer of these respondents were opposed to the no-fault system as described. Once again, respondents either did not see any contradiction in their views on fault and no-fault, or they changed their opinion after becoming aware of an alternative to tort liability.

In the final part of both survey interviews, respondents were given descriptions of two alternative types of automobile insurance (i. e., fault and no-fault) and asked to choose between them.<sup>14</sup> The descriptions were brief, but included the major points of both systems. Because of the desire for brevity and simplicity, the description of fault insurance did not explicitly exclude the first-party coverage which is available within the existing system as a supplement to liability insurance, though it did focus on the third-party liability aspects of insurance. The description of no-fault insurance did not emphasize certainty of payment, an integral part of most such systems that have been proposed.

In response to this choice question, 40 percent of the general public opted for no-fault without qualification, another 15 percent preferred it if the cost were lower and 35 percent favored the present system even if it were more costly (Table 29). Among seriously injured victims, 39 percent chose no-fault without qualification, 9 percent more would choose it if the cost were lower and 39 percent favored the status quo. Accident victims who had recovered under tort understandably showed a greater tendency to favor the fault system than those who had not recovered under tort.

14. A description of the alternative systems can be found in Public Attitudes Supplement, p. 16.

TABLE 29  
COMPARISON OF EXPRESSED CHOICE BETWEEN  
FAULT AND NO-FAULT INSURANCE FOR THE  
GENERAL PUBLIC AND SERIOUSLY INJURED VICTIMS

Choice Between Systems	General Public	Seriously Injured Victims
Favors no-fault	40%	39%
Favors no-fault only if less costly	15	9
Favors fault even if more costly	35	39
Undecided/not ascertained	10	13
TOTAL	100%	100%

Source: Public Attitudes Supplement, p. 18.

The descriptions of the fault and no-fault systems used in the foregoing "choice" question stressed that the former sometimes paid an additional amount for "pain and suffering" while the latter did not. This matter was addressed in another question which asked if compensation for "pain and suffering" should be eliminated if that would reduce insurance costs. Fifty-three percent of the respondents answered affirmatively, 37 percent negatively and 10 percent gave no opinion.<sup>15</sup>

The expression "pain and suffering" is widely used in insurance circles and elsewhere to connote the entire range of intangible or "general" damages including inconvenience, mental anguish, emotional distress, denial of future happiness or vocational opportunity because of disfigurement, physical impairment, loss of limb, sight or other bodily function, etc. It is more than probable that the majority of the respondents did not have a complete understanding of the full meaning of the term "pain and suffering," in particular the fact that it encompasses the more serious kinds of intangible loss. This

15. Public Attitudes, p. 66.

likelihood, however, by no means undermines the usefulness of the responses to the survey's questions. Most accident liability claims involving personal injury do not involve serious kinds of intangible loss. For example, a survey of paid personal injury liability claims showed that only 7.6 percent involved permanent disability, permanent disfigurement or death.<sup>16</sup> Moreover, it would appear that liability insurance payments to such victims, on the average, do not even approach their economic losses. Average total economic loss (including lost future earnings) for fatally injured victims was estimated at \$22,894; liability insurance payments averaged \$10,981. Average total economic loss for permanently and totally disabled victims was \$78,000; liability insurance payment averaged \$12,556.<sup>17</sup>

Indeed, it is clear that most of "pain and suffering" dollars are going to victims with relatively minor, transient injuries who experience their "pain and suffering" in the literal dictionary sense of the term. That a majority of the public would be willing to forego compensation for these hard to measure intangible losses is important.

A provocative point to consider is that the overwhelming majority of respondents to the attitudinal survey of the general public who were involved in multi-car accidents believed that the "other driver" was at fault (Table 30). Since fault obviously has been attributed wrongly to the "other driver" in some unknown but large number of cases, it would have been interesting to learn whether the respondents to both surveys who favorably evaluated the fault system and expressed preference for liability insurance over no-fault insurance still would hold these opinions if the actual "guilty" party were known.

16. Automobile Personal Injury Claims, p. 19.

17. Ibid., p. 53.

TABLE 30  
OPINION OF THE GENERAL PUBLIC ABOUT WHO  
WAS AT FAULT IN MULTI-CAR ACCIDENTS

Opinion on Fault	Property Damage Only	Personal Injury
Family Member	26%	18%
Both Drivers	4	3
Other Driver	65	76
No one/Unknown	6	4
TOTAL*	100%	100%

\*Detail does not add to total due to rounding.

Source: Public Attitudes, p. 119.

In evaluating these responses, it should be recognized that any question asked of a large group of people concerning their satisfaction with an existing institution is likely to carry a built-in bias in favor of that institution. While there may often be a number of complainers or fault-finders, there will also be a sizeable percentage of people who accept the status quo as they have had no negative experience to make them question it. Many of these people have given no thought to their auto insurance; they pay their premiums when they are billed, and are grateful for the feeling of being protected. It is not surprising, therefore, that when asked whether they were satisfied with their auto insurance two out of three of the general car-owning public said that they were. Understandably, those who had been seriously hurt in an auto accident and who most likely had had recent experience with auto insurance were differently conditioned as a group; only half of them expressed satisfaction.

By the time in the interview when the respondents were asked about their evaluation of and choice between fault and no-fault systems, their understanding of auto insurance had been somewhat clarified and their .

experiences and reactions had been recalled to their minds. Respondents showed a definite interest in preference for a no-fault system.

No survey on an issue as complex as automobile insurance can claim to be perfect in every way. Some may be subject to errors of construction (e. g., simplicity vs. complexity of questions and inadequacy vs. abundance of information provided to respondents); some may be subject to errors of sampling (e. g., the representativeness of the sample to the population); and some may be subject to errors of response (e. g., misinterpretation of questions). Each of these possible sources of error can produce substantially different results to seemingly similar questions. Moreover, small variations in phrasing can lead to different responses. A question written as "Car insurance companies have the duty to provide insurance for all people who need it" will likely evoke a different response than an alternate wording as "Car insurance companies should have the right to refuse to insure some people." Thus, although the responses to several public opinion surveys sponsored by various segments of the insurance industry at times conflict with the results of the Department's two surveys, after carefully reviewing each one, the basic validity of the results of the Department's surveys appears unimpaired.

One of the things that is apparent from all these attitude surveys, from the complaint letters of insurance buyers and claimants, and indeed, from almost any investigation of the consumer and his auto insurance is how imperfectly the consumer comprehends the insurance product and institution. This holds true of the existing system, and would hold true of possible changes or alternatives to it.

Large numbers of consumers appear to be unhappy with auto insurance today, largely with its cost but also with the effects of market constrictions. When insurance

consumers become claimants, especially third-party claimants, the focus of their unhappiness shifts to the conduct of the insurance company. Consumers would appear to be open to change, especially if it would reduce costs. The shift in opinions observed during the two public opinion surveys conducted for the Department of Transportation from general satisfaction with the present automobile liability insurance system to an approval of substantial changes makes it probable that the widespread availability of more information about such alternatives as a no-fault plan will increase the support for a change in the present system.

## **F. Summary of the Findings**

A review of the detailed factual findings of the Study's research and those of other research lead to a number of summary conclusions about the operation of the present system.

### **1. Limited Scope of the Auto Accident Liability Reparations System**

One major shortcoming of the auto accident liability system stems not from the way it performs but rather from its intended scope of operation, i. e. , since only those who can prove that others were at fault while they were without fault in an accident have a legal right to recover their losses. Today, our society need not settle for a reparations system that deliberately excludes large numbers of victims from its protection or that gives clearly inadequate levels of protection to those who need it most. With only 45 percent of those killed or seriously injured in auto accidents benefiting in any way from the tort liability insurance system and one out of every ten of such victims receiving nothing from any system of reparations, the coverage of the present compensation mechanism is seriously deficient.

### **2. Rational Allocation of Compensation Resources**

The present tort liability reparations system allocates benefits very unevenly among the limited number of victims that it purports to serve. The victim with large economic losses, who generally also suffers more severe intangible losses, has a far poorer chance of being fully compensated under the tort system for his economic loss, much less any intangible loss, than does the victim with only minor injuries. As has been seen, only about half of the total compensable economic losses of seriously or fatally injured victims are compensated from any reparations system. For those whose economic losses were more than \$25,000, only about a third

was usually recovered. Those with relatively small economic losses, by contrast, fared much better; if they recovered from tort and had losses less than \$500, their recovery averaged four and a half times actual economic loss. Despite the popular view that large settlements for automobile accident personal injuries are common, they are, in fact, still a statistical rarity when viewed in the context of the entire population and its losses.

### 3. Cost Efficiency of the Auto Accident Liability Reparations System

The automobile accident tort liability insurance system would appear to possess the highly dubious distinction of having probably the highest cost/benefit ratio of any major compensation system currently in operation in this country. As has been shown, for every dollar of net benefits that it provides to victims, it consumes about a dollar. As it presently operates, the system absorbs vast amounts of resources, primarily in performing the functions of marketing insurance policies and settling claims. The measurable costs of these two functions alone approach in general magnitude all net benefits received by auto accident victims through the tort liability system.

Claims settlement, of course, is complicated by the adversary nature of the tort liability system. The possibility of greater efficiency in some areas, such as sales expense, has been thwarted by local laws and regulatory rules that arbitrarily curb the introduction of potentially more economical approaches, such as group auto insurance.

### 4. Timing of Compensation Benefits

The tort liability insurance system tends to deliver benefits without regard to the victim's need, in some cases paying too late and in others too soon. Three different investigations by the Department have

demonstrated that despite commendable efforts by the insurance industry to introduce "advance" or partial payment techniques, the system is still, in the main, quite slow in providing benefit payments. The system pays most slowly in cases where the need for timely payment would appear to be greatest, i. e., in cases of permanent impairment and disfigurement. Moreover, the system can operate to discourage early rehabilitative efforts and places a premium upon their deferment beyond the time when they could be most effective.

### 5. Rehabilitation of Accident Victims

Closely related to the problem of delay in the payment of benefits is that of lost opportunities to minimize very large personal injury losses by the timely use of comprehensive rehabilitation programs for seriously injured accident victims. A disappointingly low utilization of rehabilitation by such victims was revealed in one survey, even when it was recommended to the victim.

Admittedly, rehabilitation under certain other loss-shifting regimes, notably workmen's compensation, has also been disappointing. However, this has been largely due to the overconcentration of these programs on reducing their own costs, i. e., on returning the injured person to work as soon as possible in order that the compensation system be able to reduce benefit payments. While vocational rehabilitation does benefit both the insurer and the victim, truly effective rehabilitation must deal with all of the victim's handicaps, including not only those affecting his work performance, but those affecting his non-work activities as well.

To achieve the maximum potential benefits from the rehabilitation process, the relationship between private insurance benefits and the various rehabilitation agencies, including local, state and national agencies, must be consciously and explicitly coordinated and made to be mutually supportive.

## 6. Property Damage

The Department's study of the auto accident compensation system focused principally on the bodily injured victim. This priority seemed appropriate for several reasons. First, people are more important than property. Second, the most serious accident losses are associated with people, not property. Third, the present compensation system is doing much better today with property losses than it is with people losses. Fourth, the problems of personal injury losses are far more complicated than those of property losses. Fifth, the principal problems afflicting the compensation of property damage losses are either also present in compensating personal injury losses, or are externalities such as vehicle design or repair costs.

Nevertheless, property damage losses are important; they are very large in dollar value and they affect far more people than injury losses. In recent years the cost of repairing vehicles has risen sharply with a consequent rise in the cost of insuring for that repair. Experts, many of them within the insurance industry, have rightly traced part of this rise to the designs of the vehicles themselves. Unfortunately, there is no way for liability insurance to distinguish between damage-resistant vehicles and fragile vehicles, or between very expensive vehicles and those of less value, because the liability insurer cannot know what kind of a vehicle its insured will negligently strike.

Rating systems for collision insurance have only very recently begun to take any consideration of the vehicle's damageability. Now that the vehicle's contribution to crash losses is widely recognized and being increasingly considered by the insurance community, some countervailing pressure on vehicle manufacturers to design more crashworthy and damage-resistant automobiles may be in the offing.

## 7. Strains on Insurance Institutions

The accumulated problems of the tort liability auto insurance system are now making an undeniable impact on the insurance industry itself. Underwriting profits have turned to underwriting losses for many, if not most, companies. Several analyses have indicated that some capital has already been withdrawn from the business of insurance, with a consequent diminution of its ability to offer protection. If such a trend were to persist or accelerate, it would present a social problem of very serious proportions.

Auto insurance today is becoming more and more difficult for many drivers to buy in the voluntary insurance market. Between 1966 and 1969, the number of motorists having to obtain their insurance through assigned risk plans grew from 2.6 million to 3.2 million, or 23 percent.<sup>1</sup> One of the Department's studies estimated that 8 to 10 percent of all drivers were in the "hard-to-place" insurance market in 1968; and recent months have witnessed a further tightening of the auto insurance market, with some major companies either refusing or severely limiting any new business. This development comes at a time when consumers' requirements for automobile insurance protection are increasing if only because of rising medical and auto repair costs.

## 8. Impact on Other Public Institutions

Automobile accident disputes are a major contributory factor to the present problems of the nation's judiciary, even as a multitude of other demands threaten to overburden and, thereby, undermine its effectiveness. Automobile accidents contribute more than 200,000 cases

1. National Association of Independent Insurers, Chart Analysis of Automobile Insurance (Assigned Risk) Plans.

a year to the nation's court load and absorb more than 17 percent of the country's total judicial resources.

The motor vehicle accident tort liability insurance system also has exerted great strains on the existing system of State insurance regulation. It is not coincidental that the burgeoning problem of insurer insolvencies has been concentrated among specialty auto insurers serving the high-risk market. The resulting difficulties created by these insolvencies for consumers, regulators and the insurance institution in general, have proved so resistant to solution that they have led to proposals for a greater centralization of regulatory control, thereby threatening local initiative and freedom in insurance regulation.

#### 9. Highway Safety and Crash Loss Minimization

Highway safety research and technology is demonstrably moving from an art to a science. However, the tort liability system has served, albeit not intentionally, to impede the development of this science in many ways. It discourages openness and frankness and encourages deceit on the part of participants about what happened before, during and after crashes. With the effectiveness of safety programs depending upon a scientifically sound understanding of the causes of highway crashes, insured drivers are now routinely instructed by their insurance companies to speak to no one other than the police, and even then to admit nothing, lest their cases be prejudiced. Injured victims are similarly cautioned by their attorneys to avoid disclosure.

With its single-minded preoccupation with driver error or negligence as the determinant of the compensation decision, the tort liability system ignores all other contributing factors to crash losses, such as the vehicle and the roadway. Cars that are poorly designed to resist damages and to protect occupants from injury can turn what should have been a minor

crash into a large loss or even a serious tragedy. Yet the tort liability insurance premium does not and cannot reflect the value of the car's protective attributes in any way because the third-party's vehicle is unknown until after an accident has occurred.

\* \* \* \* \*

In summary, the existing system ill serves the accident victim, the insuring public and society. It is inefficient, overly costly, incomplete and slow. It allocates benefits poorly, discourages rehabilitation and overburdens the courts and the legal system. Both on the record of its performance and on the logic of its operation, it does little if anything to minimize crash losses.

U.C. BERKELEY LIBRARY

### PART III. ALTERNATIVES TO THE AUTOMOBILE ACCIDENT TORT LIABILITY SYSTEM

The automobile accident reparations system can be viewed as consisting of two main components: the "reparations component," i. e., the basic legal and procedural rules governing reparations and the "insurance component," especially as it relates to, and buttresses, the "reparations component." The latter comprises not simply insurance itself, but also the compulsory insurance and compensation laws, assigned risk plans, mandatory policy provisions, etc. This dichotomy should be kept in mind in viewing the public policy alternatives with regard to the automobile accident reparations system.

Over the years, the reparations system has not lacked for would-be reformers. Its complexity, both in theory and in operation, has permitted great individuality in the framing of reform proposals, whose number has burgeoned, especially in the last decade. They range from minor adjustments to comprehensive programs for fundamental change. Some attempt to achieve improvement through the insurance component, some through the reparations component, and some through both. Some see the problems arising outside the reparations system and seek changes in other institutions or regimes, e. g., court administration, car design, driver licensing and training, traffic law enforcement, etc. A few are patently nostrums; most are serious, well thought out, often imaginative proposals. No attempt will be made here either to summarize or analyze even the major plans now being widely studied.

#### A. Conceptual Considerations and Options

There is, in fact, a vast and largely unmanageable number of combinations possible among the various reform alternatives on such important considerations as: (1) the legal rule governing reparations, (2) the role of

insurance, (3) the kinds of losses to be compensated, (4) private vs. social insurance, (5) compulsory vs. voluntary approaches, and (6) the insurance/loss minimization objective. In order to illustrate the breadth of choice possible, some of the principal alternatives in each of these areas will be briefly described without attempting to examine how all alternatives in one area might interact with all those in another or make judgments about them. Subsequently, the advantages and disadvantages of the major choices for change also will be described.

1. The Legal Rule. The prevailing legal rule regarding automobile accident losses is, of course, that of tort liability under which the innocent victim is legally entitled to recover all of his losses, tangible and intangible, from the wrongdoer if he can prove that the latter was at fault and it is not established that he was himself at fault. While many other advantages are now claimed for this rule (e.g., fairness, vindication, deterrence, etc.), its basic original social purpose (before the advent of insurance) was to shift the burden of loss from the innocent victim to the wrongdoer. Some of the available options are:

- a. Substitute a comparative negligence rule for that of contributory negligence. Under the comparative negligence rule most widely advocated for general adoption, the claimant would be barred from recovery only if his negligence equaled or exceeded that of the defendant; for a lesser degree of negligence, his recovery would be reduced to such extent as it contributed to causing the accident.
- b. Substitute an absolute liability rule by which the driver/owner of any vehicle would be automatically responsible for any damage to others in an accident, regardless of whether he, another driver, or anybody was "at fault" or negligent. Justification

would rest on the assumption that the automobile is an "inherently dangerous" object and driving is an "inherently dangerous" activity. As such, the driver/owner should be absolutely responsible for any damages.

- c. Abolish tort liability in automobile crashes; each driver/owner accepting responsibility for some or all losses sustained by pedestrian occupants of his own vehicle in return for which he would enjoy immunity from suit for those losses.
- d. Replace jury trial judgment of some or all claims with compulsory arbitration.
- e. Adopt a "direct action" statute under which a claimant is permitted to bring action directly against another motorist's liability insurer.

2. The Role of Insurance. Today, there are essentially four types of insurance serving the automobile industry; two are oriented specifically to the automobile and two are general insurances.

Under most State financial responsibility laws, automobile liability insurance is virtually compulsory in practice if not in theory. From the policyholder's perspective, auto liability insurance is designed to protect his assets in the event he is found at fault in an accident. From the public's perspective, compulsory liability insurance is intended to assure that the innocent victim will have a source from which to recover damages; thus, it would not become a burden on the State to pay his uncompensated losses.

Uninsured motorist insurance is a related form of coverage, generally required to be provided or added to the purchaser of liability insurance to protect against "guilty" third parties who are uninsured or not insured by an insurer that subsequently becomes insolvent.

The first-party automobile insurance coverages -- medical payments, comprehensive, and collision -- are essentially voluntary. Collision and comprehensive insurance, however, are usually required when the purchase of a car is financed.

General private insurance -- life, accident and health, disability income, etc. -- provides an important source of compensation for the auto accident victim, albeit sometimes redundantly where there is also a tort recovery.

Social insurance -- social security disability, Medicaid, veterans' benefits, etc. -- are also important sources of recovery for the accident victim, but they too contribute to the problem of duplicative recovery.

Besides the coordination of benefits problems created by this plethora of possible recovery sources, there is the question of the desirability of "internalizing" auto accident costs, i. e., "making motoring pay its own way" rather than shifting the burden of accident losses to general or social insurance programs. In addition, there is the question of limits and deductibles, i. e., whether a private, competitive insurance system should attempt to deal with small losses, or whether it is well-equipped to deal on a large scale with catastrophic losses to individuals.

Some of the options in this area are:

- a. Abolish the collateral source rule under the fault system in order to preclude the plaintiff from claiming damages with respect to expenses recovered from other sources, or, alternatively, allow the defendant to show that the plaintiff has recovered such expenses from other sources.
- b. Make all auto insurance first-party insurance that is primary (or alternatively, excess) to all other

insurance coverage or primary (or excess) to benefits provided by other compensation systems.

- c. Make first-party auto insurance mandatory with respect to bodily injury loss (hospital/medical expense, disability income) but voluntary with respect to property damage, collision, etc. Preclude by statute or rule recovery under tort for any losses mandatorily covered by first-party auto insurance.
- d. Provide for reasonable deductibles under a first-party system to avoid the excessive transaction costs of handling small claims.
- e. Make recovery unlimited under compulsory coverages, at least for tangible economic losses.
- f. Permit insurers to limit their liability, subject to minimum statutory limits of liability.

3. Kinds of Losses to be Compensated. Under tort liability rules, intangible as well as tangible (i. e., economic) losses are legally recoverable. Liability insurance tries to respond to this goal, at least in theory, subject to the limits of liability contained in the policy or required by the applicable statute. As previously noted, intangible losses include those losses not susceptible to objective measurement in dollars, e. g., pain and suffering (the "ouch"), mental or emotional disturbance, bereavement over the loss of a loved one, inconvenience, annoyance, and loss of vocational or social opportunity incident to loss of limb, sight or function or because of disfigurement. Because there is no objective way to put a price on these losses, the price is established under the tort system either through bargaining or, where agreement is impossible, through decision by a jury.

A first-party insurance system that eliminated or limited the right to recovery for pain and suffering and

similar intangible losses might reduce the expense part of the insurance dollar by eliminating the bargaining or litigation inherent in attempting to evaluate intangible damages and by eliminating the other transaction costs involved.

Additionally, under a first-party system, the insurance consumer would enjoy the contractual right to recover benefits from the insurer whom he has chosen and to whom he has paid his premium. In contrast, under the present system, the injured party has no rights whatsoever against the wrongdoer's insurer unless he obtains a judgment against the wrongdoer.

There is also the question of whose losses a specialized auto insurance system should compensate. The innocent victim falling within the tort liability system has the right, in theory if not in practice, to recover all his losses. Victims of many other kinds of accidents can recover only certain types of losses (e. g., they cannot recover their intangible losses), and then only if they have voluntarily chosen and been able to insure themselves in advance. This is true no matter what their need, no matter how slight or unintentional their negligence. Moreover, the main impact of a wrongdoer's negligence can and often does fall uncompensated on wholly innocent parties, e. g., on the survivors of a fatally injured but negligent driver. Should the compensation system, especially one supported by the premium payments of all drivers, make this harsh distinction between victims whose relative contributions to the cause of the accident may be slight, if perhaps indistinguishable?

Major options in this area are:

- a. Abolish any legal right to compensation for intangible damages in auto accident cases.

- b. Abolish the right to be compensated for pain and suffering, inconvenience, discomfort, grief, emotional loss of a loved one, etc., but retain the right to recovery for loss of sight, limb, major function, permanent serious disfigurement or impairment, etc.
- c. Establish a schedule of damages for specified types of intangible loss, e. g., \$5,000 for loss of limb or \$10,000 for loss of sight.
- d. Permit intangible damage insurance to be sold on a voluntary basis, if insurers can work out satisfactory methods and procedures.
- e. Permit all victims except those who intentionally injure themselves, or are grossly negligent, etc., to have equal rights to compensation according to their needs.
- f. Replace contributory negligence with a comparative negligence rule.

4. Private vs. Social Insurance. The automobile insurance and compensation system today is a private institution, subject, however, to regulation in the public interest. It is regulated not only by insurance and motor vehicle regulatory authorities, but also by the courts which interpret statutes and review legal doctrines in the light of a public policy favoring compensation of innocent accident victims. Although financial responsibility and compulsory insurance laws have made the possession of liability insurance virtually obligatory, the choice of one's insurer and the amount of one's protection (above minimum limits) is still largely a voluntary matter for the majority of good drivers. Some commentators have suggested that the problems of our private auto accident compensation system are so great and apparently so resistant to solution, and that the public's interest in their solution is also so great, that only a governmentally

managed insurance approach promises a truly fair, efficient and comprehensive system. Financing for a social insurance auto accident compensation mechanism could be achieved through general tax revenues, taxes on motor vehicles or fuel, or scheduled fees for drivers/owners.

A key facet of this issue concerns the "residual" auto insurance market for those motorists who are unable to obtain liability insurance in the voluntary market and are forced to obtain it from assigned risk plans or high-risk insurers at significantly higher rates. Such difficulty in obtaining coverage and the high cost of buying it in the "residual" market usually falls heaviest on those already economically and socially disadvantaged. Regardless of what form auto insurance takes (i.e., fault or no-fault, first-party or third-party), as long as insurers are free to reject marginal applicants, some motorists will be unable to buy coverage in the voluntary market.

Some of the principal alternatives in this area are:

- a. Shift the compensation of some auto accident losses (costs) -- e.g., medical, rehabilitation, income maintenance, but not property or intangible losses -- or all auto accident losses to a governmentally directed social insurance approach, perhaps employing private carriers on a fee basis to service the system (a la Medicare).
- b. Have the government become an "insurer of last resort," either itself insuring such residual risks at rates less than the actuarial rates or subsidizing such risks by paying or guaranteeing private insurers the difference between the actuarial rates and the fully compensatory rates.
- c. Require private insurers to accept all applicants, perhaps with the aid of some reinsurance institution such as that used in Canada.

- d. Replace the private automobile insurance system with a governmentally owned and operated automobile insurance mechanism, the funds of which would be raised through the contributions of drivers and owners.

5. Compulsory vs. Voluntary Approaches. State statutes have rendered minimum limits of auto liability insurance virtually compulsory for the average driver. However, the absence of any compulsion to insure one's own losses and the relatively low minimum liability insurance limits have left very large amounts of loss uncovered by auto insurance, or indeed by any type of insurance. Moreover, even with financial responsibility laws, substantial numbers of motorists are not insured for liability while many others are without effective coverage for particular accidents because of coverage gaps or breaches of policy provisions by the insured.

The major alternatives here are:

- a. Establish a nationwide, universal, compulsory insurance system based on tort liability, requiring high limits and making the insurer's liability absolute so that the victim's claim cannot be defeated because of policy defenses.
- b. Establish a nationwide, universal, compulsory insurance system based on a first-party concept, requiring high limits but maximizing the area of voluntary choice through the introduction of deductibles applicable to the named insured and those within his control (e.g., members of the household) and, perhaps, to others (e.g., uninsured guest passengers or pedestrians).
- c. Maximize the area of voluntary choice with respect to all insurance coverage (most logically by making everyone responsible for his own losses).

6. Insurance and the Loss Minimization Objective. If the first link in any accident causation chain is driver error or negligence, modern accident theory has increasingly pointed to the vehicle as being the principal determinant of whether or not there will be loss and if so what its nature and severity will be. Liability law and auto insurance rating schemes focus almost entirely on the driver, his behavior, his driving exposure, his potential as a defendant in a liability suit and the estimated likelihood of his accident involvement. The ability of the vehicle to protect either itself or its occupants in a collision is not, indeed cannot be, included in liability insurance rating plans because the insurer cannot know who the victim will be or in what kind of vehicle he may be riding.

By contrast, in a first-party system not only would an insurer know in advance what kind of owner/driver it was insuring, but, in addition, it would know what kind of car the insured was driving or occupying, what protective or safety devices it incorporated, whether it was overpowered for its size and weight, whether it was overly or needlessly susceptible to major damage from minor impact, etc.

The deterrent effect of legal liability for negligent driving as a loss minimizing measure is often advanced as an attribute of the tort liability rule (i. e. , since the rule holds that a person is responsible for damage directly resulting from his negligence). However, whatever force this threat may once have had, it would seem that insurance has essentially nullified it by allowing drivers to shift the costs of their accidents to the rest of the insuring population. Thus, while the fiction of punishment of the guilty driver remains in the law, the economics of insurance has freed him from its reality. Precisely what effect this fiction of tort liability "punishment" has on the diligence of law enforcement agencies in implementing traffic regulations designed to punish negligent drivers is not clear; but it is clear that the great

majority of accident-involved drivers who might be considered negligent in a tort sense are not fined or punished under our traffic laws. If society does want "guilty" drivers to be "punished," and if the threat of "punishment" is judged to deter negligent driving, then perhaps renewed emphasis should be given to the direct punishment of accident-causing drivers.

Some alternatives in this area would be:

- a. Place auto insurance on a first-party basis and permit or insist that insurers consider the loss prevention capabilities of the vehicles they insure.
- b. Establish national standards for driving conduct and for the imposition of penalties for driving violations (such as fines, mandatory revocation or suspension of license, compulsory rehabilitative treatment for the alcoholic driver, etc.), and let the compensation system do what it can do best, i. e., compensate victims for their losses.

## B. Basic Alternatives

While not reflecting the many nuances and subtleties of the various specific detailed reform plans that have been offered, the range of basic alternatives can be seen in the six described briefly below:

### 1. "Do Nothing Significantly Different"

An obvious option, in fact the one currently being followed, is to do nothing significantly different in connection with either the "reparations component" or the "insurance component" of the automobile accident reparations system. Justification for this approach might rest on such grounds as:

- a. The cost problem of insurance will recede as a public issue as inflationary tendencies abate and as loss costs are controlled by the cumulating effects of safety measures and pressure on car designers.
- b. The insurance availability problem will improve as inflation slows and rate levels become more satisfactory.
- c. The number of people affected by compensation problems is not large even now; and with the growing tendency of drivers to buy high limits of liability insurance and the growing availability of benefits for all victims from non-auto insurance sources, it will become even less of a problem in the future.
- d. The tort liability rule should not be disturbed for any but the most compelling reason, and the present problems of auto insurance do not constitute such a reason.

Advantages of the "Do Nothing" Option. This option, at least superficially, is not without some appealing advantages. For example,

- a. It is easy.
- b. It would involve no precipitate economic dislocations or shifts in competitive advantage for the business participants in the system.
- c. In the near term, its results are fairly predictable.
- d. No new governmental initiatives would be required.

Disadvantages of the "Do Nothing" Option. The disadvantages of this option are both numerous and obvious. The principal ones are:

- a. It ignores a serious public problem for which experience gives little hope of a spontaneous cure.
- b. It is difficult to reconcile with the demonstrated and growing intent of the consumer and his legislators for some kind of change.
- c. It risks the development of a crisis such that nothing short of a government takeover of the compensation responsibility would solve.
- d. It does nothing about insurance costs.

## 2. "Improve the Present Reparations System"

This alternative, which reflects the American Bar Association's concession that the automobile insurance and compensation system needs reform, is premised on the assumption that reform can, and should, stop short of abandonment of the tort system or other "hallowed" legal tenets such as the collateral source doctrine. (The Defense Research Institute, a research organization of insurance company lawyers, advocates that the defendant be permitted to lay before the jury the

fact and amount of the plaintiff's compensation from other sources.)

The principal features of this plan may be considered under the headings: (a) judicial reform, (b) substantive-law reform, (c) insurance reform, (d) automobile insurance costs and (e) legal services.

Judicial Reform. This plan argues that the hardship and injustice resulting from court delays can be eliminated through streamlining and improving the judicial process, e. g., by providing for unified court systems with presiding judges empowered to assign other judges to best advantage. Also recommended is the provision of administrative officers to assist the court in scheduling trials and maintaining the flow of cases. Improvements in judge selection and tenure and in pre-trial and trial procedures are seen as ameliorating trial delay. While rejecting mandatory arbitration, voluntary waiver of jury trial and the provision of panels of judges who attract jury-waived cases would be cautiously encouraged. Efforts toward voluntary arbitration of small claims would be cautiously encouraged. Advance payments would be facilitated by statutes negating any inference of liability on account of such payment. Primary emphasis, however, is placed on increasing the number of judges, with provision made to maintain an appropriate ratio by automatically adding judges as population increases.

Substantive-law Reform. The plan, while recognizing that comparative negligence will result in more recoveries both by way of judgments and by way of settlements, recommends a Wisconsin-type comparative negligence rule. Immunities such as governments' sovereign immunity, the inter-spousal and intra-familial immunities and the immunity of charitable organizations would be eliminated. Guest passenger statutes, however, would be retained because "[t]heir repeal would have a marked upward (and apparently unacceptable) effect on insurance

costs in the states having them."<sup>1</sup> Statutory limitation on recovery in wrongful death cases, where mere pecuniary loss, would be removed. In those states where the sole measure of recovery in such cases is punitive damages, statutory limits would be removed.

Insurance Reform. There would be universal compulsory automobile liability insurance with mandatory uninsured motorist coverage, including insolvency protection. There would be no compulsory provision of non-fault benefits on a first-party basis since this is viewed as containing the seeds of the destructive adversary system. However, study should be made of a plan for payment of medical expenses under a "no pay, cross-over" scheme through which the at-fault victim, including the pedestrian, would receive medical expenses, regardless of fault, under the no payments coverage of the other party, i. e., on a first-party basis. This provision of limited mandatory benefits on a strict liability basis would not entail abolition of the adversary system.

Automobile Insurance Costs. Principal responsibility for any cost reduction would be placed on the automobile insurance industry to find better and less costly ways of providing and distributing the current insurance services and on more speedy and efficient ways of delivering insurance services.

Legal Services. The contingent fee system would be retained, but with the courts assuming responsibility for the examination, scheduling and supervision of attorneys' fees and for the discipline of attorneys who violated established rules or act unprofessionally. The courts would require the filing of information on contingent fee arrangements as well as the filing of closing statements and they would be empowered to promulgate contingent fee schedules when appropriate. Courts would

---

1. ABA Report, p. 87.

provide for the filing and disposition of clients' complaints against attorneys.

Advantages of the "Improve the Present Reparations System" Option

- a. It would bring reparations to some victims not now compensated, e. g., those barred by contributory negligence or immunity doctrines.
- b. Compulsory, universal insurance would prevent uninsured motorists from being able to benefit from the system while not contributing to it.
- c. Delay occasioned by court congestion would be mitigated.

Disadvantages of the "Improve the Present Reparations System" Option

- a. It retains most of the costs inherent in any adversary system.
- b. It does not come to grips with the needs of the "guilty" victim and his dependents or survivors.
- c. It is more likely to increase costs than decrease them.
- d. A more efficient judicial administration may increase the litigation burden rather than decrease it since more cases can be litigated, albeit faster.

3. "Evolutionary Reform, Type I"

Type I Evolutionary Reform would require a compulsory, first-party medical and income benefit coverage as a floor for compensable damages for all motor vehicle accident victims. Any amounts received under this



coverage would be subtracted from any additional recovery a victim might be entitled to under tort.

This type of proposal frequently is coupled with other measures to improve the provision of compensation under tort liability rules. The comparative negligence concept would be adopted, providing for recovery under tort based on the degree of fault rather than requiring the absolute absence of fault as under contributory negligence. It would also allow insurance companies to deduct the claimants' income tax savings in the determination of recoverable damages. The plan also anticipates the adoption of measures to promote the use of advance liability payments in meritorious cases.

Several features are designed to improve the cost effectiveness of the present system. These include mandatory arbitration of small claims under \$3,000 so as to reduce the amount of legal and judicial effort and expense needed for the vast majority of small cases. Standards for measuring pain and suffering damages would be established. For example, one proposal contemplates paying for pain and suffering an amount equal to 50 percent of medical and income loss below \$500 and 100 percent above \$500. Additional amounts would be allowed in cases involving permanent disfigurement, impairment or death. Attorney fees would be regulated by law subject to modification by the courts. Stiff penalties would be provided for fraudulent claims.

#### Advantages of "Type 1 Evolutionary Reform"

- a. It enables most accident victims to obtain timely compensation for their personal injuries as a matter of contract, while still leaving the tort remedy essentially unimpaired.
- b. Controls on pain and suffering payments and contingent fees, and compulsory arbitration should

provide some cost savings and help reduce court congestion.

- c. It would provide a modest compromise with the total no-fault principle, and as such, might be considered by those who wish to so view it as an evolutionary step toward a more comprehensive no-fault system. (Some versions of the plan would allow the first-party insurer to subrogate against the other party's insurer for any first-party benefits paid. Such a system would not, of course, be a step in the direction of no-fault insurance.)
- d. It would increase the cost efficiency of the system, at least modestly.

#### Disadvantages of "Type I Evolutionary Reform"

- a. The assurance of first-party recovery might add to the tendency to litigate or hold out for larger tort settlements.
- b. The low level of assured first-party benefits does not effectively treat the problem of the seriously injured victim, and there is no incentive to better rehabilitation.
- c. Since it deals only with personal injury benefits, there would be no pressures on car designers through insurance rates to design less fragile cars.
- d. While some costs would be purged from the system, it is unlikely that the savings would be sufficient to offset the increased costs of the additional benefits.
- e. If the first-party carrier is allowed to subrogate on the basis of fault, the system will continue to incur the transaction costs of shifting the loss.

#### 4. "Evolutionary Reform, Type II"

This proposal would predicate the basic desirability of the no-fault concept of auto accident compensation but would attempt to recognize and cope with the problems of practical implementation and public acceptance involved in a shift to a largely first-party reparations system. The principal insurance and compensation aspect of this option would be:

- a. First-party automobile accident insurance covering all economic loss (medical, income, etc.) up to high levels would be compulsory, with coverage extended to the vehicle owner and all members of his household, to any person operating, occupying or using a motor vehicle with his permission and to any uninsured pedestrian struck by a motor vehicle. This insurance would cover economic loss resulting from accidental bodily injury, sickness or disease, including death, or damage to such motor vehicle sustained while in or upon, entering or alighting from a motor vehicle, or as a result of being struck, as a pedestrian, by the motor vehicle and arising out of the ownership, operation, maintenance or use of such motor vehicle.
- b. A mandatory deductible would be imposed for the purpose of avoiding the inordinate expense of handling small losses; a choice of deductibles for the various coverages would be available to the insured at appropriate rates. In addition, several options could be made available to the insured with respect to the ceiling on recoverable wage loss. Rates appropriate to the ceiling selected (and hence to the insured's ability to pay) would apply.
- c. Such coverage would apply only as excess over any other insurance or benefits available under any

other insurance policy or benefit plan. The deductible and the concomitant rate selected by the insured would ordinarily reflect the extent to which he anticipates other coverage or benefits available to him to respond to any loss sustained by him or members of his household. (An alternative, which would recognize the fact that auto accidents frequently involve many kinds of loss, and that consequently it may be more efficient to deal with one benefit source than several, would be to make this coverage primary and let other systems bear the burden of coordinating their benefits with auto insurance. In this case, savings from the elimination of duplicate benefits would be achieved in the non-auto insurance coverages.)

- d. Every owner, operator, person or organization responsible for the operation or use of an automobile insured for the first-party coverage would be immune from tort liability for the types of damages covered in the mandatory first-party insurance. Tort recovery for intangible damages would be limited to serious cases only, if at all.
- e. Rate structures and rating plans would be expected or required to give consideration to the safety devices and damage-resistant features of the insured vehicle.
- f. Incentives for rehabilitation would be provided, and the tort fines contemplated by the plan could be allocated to such purpose or to highway safety programs.
- g. The system would be implemented in stages, on a single nationwide schedule. There would be an opportunity to review and assess the performance of the new system before proceeding to the next stage.

### Advantages of "Type II Evolutionary Reform"

- a. Ultimately, depending on the implementation schedule, this plan should sharply reduce litigation and accident-related court congestion.
- b. The plan, at least on its logic, should permit the achievement of substantial economies in the delivery of benefits.
- c. It would assure a much higher level of benefits to all victims.
- d. With the assured availability of higher personal injury benefits, insurance could be made to support rehabilitation programs more effectively.
- e. Insurance rates could be made to reflect the loss-causing potential of poor car design.
- f. Gradual implementation would give time for institutions to adjust and for the plan to be tested and improved.

### Disadvantages of "Type II Evolutionary Reform"

- a. The cost savings, diminution of court burden, higher compensation levels, etc., would be postponed to the extent full implementation was delayed.
- b. While a convincing case can be made that compensation for personal injury should not have to run the gauntlet of an adversary determination, the same is more difficult to make with respect to property damage to the car. This is especially true of the "parking lot" accident or "fender-bender" where who "caused" the accident is manifestly clear and yet the "innocent" car owner might have to absorb a rather high deductible.

- c. During the transition to the no-fault system, there will be some overlapping between first-party and third-party systems that may produce dis-economies of an unknown nature.
- d. Even though they may be in a minority, some of the public may find no-fault arrangements unacceptable.
- e. The absolute costs of the system are unknowable (Medicare will be cited), and it will be argued that these costs will create a degree of disenchantment that can lead only to social insurance.

#### 5. "Total No-Fault"

This total no-fault option reflects the proposal of the American Insurance Association (AIA) which concluded that the deficiencies of the present system are traceable to the fault method of determining eligibility for reparations and to the rule of damages which permits recovery for intangible losses without providing an objective standard for measurement. As proposed, it held forth the prospect of a premium saving from adequate rate levels of up to 45 percent on compulsory coverages. The principal provisions include:

- a. Compulsory first-party insurance covering all economic loss without limit (except wage loss over \$750 per month) for the vehicle owner, his family, vehicle occupants not otherwise covered and pedestrians. This insurance would be primary for the owner and his family and provide coverage in any motor vehicle accident except public vehicles, in which case that vehicle's insurance would be primary.
- b. Complete immunity from any tort liability arising from a motor vehicle accident.

- c. A tax offset of 15 percent applicable to income reimbursement, subject to proof of a lower value.
- d. Exclusion of payment for pain and suffering, but the inclusion of additional payment for permanent impairment or disfigurement not to exceed 50 percent of hospital and medical expenses.
- e. Requiring automobile insurance to be primary (no deductions are made for duplicate payments made by health insurance, sick leave, etc.) on the theory that the motoring public should bear the cost of motor vehicle accidents and that over time collateral benefit systems will exclude motor vehicle accidents. (The New York proposal of Governor Rockefeller would retain the basic features of the AIA plan except that it would make the compulsory no-fault coverage excess to all other benefit sources.)
- f. Economic loss benefits payable as losses accrue, thereby permitting timely payments not possible for most victims under the prevailing lump-sum settlement system.
- g. Residual liability coverage covering the motorist in any State or jurisdiction where tort law continues to apply.
- h. An "Assigned Claims" plan to handle any cases not covered by the compulsory insurance.
- i. Exclusion of benefits for damage to one's own vehicle unless collision coverage is voluntarily purchased. All motorists would have to purchase property damage coverage to pay for any damage they cause to someone else's property other than motor vehicles.

- j. Exclusion of benefits for anyone who intentionally inflicts injury upon himself through the use of an automobile.

#### Advantages of a "Total No-Fault" System

- a. System costs, court burden and delays in payment should be minimized.
- b. Benefits should more closely parallel the economic needs of the victim.
- c. Rehabilitation could be encouraged.
- d. Maximum incentives would be placed on designers to develop safe and durable cars.
- e. Premiums would accord better with ability to pay.
- f. Insurers would be better able to assess the loss potential of prospective insureds.

#### Disadvantages of a "Total No-Fault" System

- a. Depending on benefit levels, total costs might rise.
- b. Intangible losses that now are compensated would go uncompensated.
- c. Such a drastic change comprises many uncertainties and unknowns.
- d. The respective competitive advantages of individual companies might change sharply and in unpredictable ways.
- e. The change would effectively eliminate any major role for the auto accident negligence bar, and if reform did not work, that capability might be difficult to reconstitute.

- f. If no-fault proved unacceptable in practice for whatever reason, the structure of the tort liability insurance system might prove incapable of reconstitution, with the only option being that of a social insurance scheme run by the government.
- g. However slight, whatever value the fault system has as a deterrent to deviant driving behavior would be lost.

#### 6. "Government Insurance"

Government-run reparations systems are now operating in Canada and Puerto Rico. This particular version is designed to provide an automatic accident compensation scheme that would guarantee a reasonable minimum of compensation for losses arising from motor vehicle accidents regardless of fault.

The plan would encompass not only personal injury (non-fault) benefits but also first-party automobile physical damage coverage and third-party liability and uninsured motorist coverage with combined limits of liability of \$35,000. In short, the plan does not erase the fault system, although any tort recovery is diminished by the non-fault benefits previously received.

Insurance would be compulsory. A premium charge would be assessed with respect to the vehicle itself and another premium charge against each driver at the time of his licensing and varying with his traffic record. The system, therefore, lends not only to the equitable implementation of a safe-driver, merit rating plan, but also allows the driver to be insured rather than just the car. The registration certificate and the operator's license would constitute the insurance policy.

The compulsory insurance would be a government monopoly, but supplemental coverages could be provided by private insurers as well as by the government. The

compulsory, non-fault coverage would encompass:

(1) personal injury, including compensation for impairment of bodily function, weekly indemnity and a discretionary supplemental allowance for out-of-pocket expenses not otherwise reimbursed; (2) death benefits; and (3) comprehensive motor vehicle physical damage coverage, including collision. All except the death benefit would be subject to a deductible.

Under the personal injury benefits, weekly indemnity at a specified rate per week would be provided during the period of total or partial temporary disability up to a maximum of two years. Provisions would be made for payment for disability remaining after treatment measured by the degree of disability of the injured part in relation to the body as a whole. Loss of sight or hearing and disfigurement would also be covered. There would be a maximum amount payable under the disability schedule. Where death results, death benefits up to \$10,000 would be payable.

#### Advantages of "Government Insurance"

- a. There would be no "residual market" problem for "high-risk" drivers since the government monopoly would spread loss costs across the entire driving population.
- b. Responsibility for driver licensing, traffic law enforcement, safety standards, etc., would rest with the same institutions responsible for dealing with motor vehicle accident loss costs.
- c. Marketing costs would be reduced.
- d. Standards of compensation would be more responsive to legislative intent.

**Disadvantages of "Government Insurance"**

- a. Government insurance would require the creation of a government insurance institution of formidable proportions.
- b. Experimentation and adaptation to local needs and desires would become more difficult.
- c. Costs would probably rise (viz., Medicare) and benefits would be circumscribed.
- d. Government insurance would lose the incentives to economy and efficiency that, in theory at least, are now provided by the private, competitive market.

## PART IV. RECOMMENDATIONS FOR CHANGE

### A. Toward a Better Compensation System

Weighing all the advantages and disadvantages of the various choices available, the main outlines or principles of a better compensation system can be identified: a system that would be more efficient, offer greater flexibility and personal choice, be fairer, give greater incentives to loss reduction and do a better job, overall, of repairing victims' losses.

#### 1. Basic Reliance on First-Party Insurance

One of the important unmet needs apparent in the experience of the existing tort liability system is for a continuing, mutually confident and cooperative relationship between the insured and his insurer. Unlike the present system where the innocent victim must deal in an adversary relationship with a strange company, a "compensation" system in which the insured evaluates and chooses his own benefit source in advance of his loss would appear to offer many advantages. It would seem to be far more effective and satisfactory if the person injured in an accident could look to his own insurer for compensation just as is now true of homeowners or health and accident insurance where benefits are forthcoming as a matter of contract rather than of fault-finding and bargaining or suit. Such a "first-party" arrangement automatically places a greater importance on the quality of service to the victim, encouraging insurance companies to compete on this basis. Victims dealing with their own insurer would be less inclined to jeopardize that relationship by way of exaggerated or fraudulent claims than they are today when dealing with "somebody else's" company.

A basically first-party system would also enable the insurer to evaluate its risk in the broadest and fairest context, since it will know who it may have to

compensate, the value and protective attributes of the vehicle they will be occupying, their driving habits, exposure and record, and their probable economic needs in the event of an accident. Unsafe, overpowered or delicately designed vehicles could begin to reflect their true costs in terms of their potential for causing and sustaining accident losses.

## 2. Availability of Benefits to All Accident Victims

A socially responsible auto accident reparations system should guarantee basic benefits to all accident victims, except, of course, those who willfully injure themselves or others. It should cover the economic losses associated with medical expenses, income loss, funeral expenses, required replacement services and property losses, at levels designed to prevent or effectively mitigate any serious economic dislocation for the individual victim or his dependents in all but the most catastrophic cases. Supplemental benefits should be available on a voluntary basis. At the same time, drivers should be given the choice not to insure themselves against minor losses, but instead to absorb them directly and, thereby, avoid the high administrative costs that the insurance institution incurs when handling minor claims.

## 3. Coordination of Benefits

The respective roles of governmental and the many different private insurance systems should be clearly defined and coordinated. At present, it is possible under some circumstances for a victim to collect compensation for the same loss from several different sources. To the extent that social insurance is available, private insurance sources should be relieved of any obligation to duplicate those benefits. By the same token, benefits paid by automobile insurers under mandatory coverages should not be duplicated by other private insurance systems such as general health and accident insurance.

While not as clear-cut, among reparations sources it can be logically argued that any mandatory auto insurance should be the primary benefit source.

#### 4. Maximum Choice

The individual car owner should be given maximum choice of his insurance source. Individuals should be free to choose between a separate auto insurance policy with the required minimum mandatory coverage and other broad medical-disability plans which meet the standards for that coverage, perhaps through the addition of supplemental benefits, especially for auto accident losses. Thus, for example, one could elect to insure either through his automobile insurer or through his health and accident insurer, providing the latter offered a policy that met the standards for auto accident coverage. In this way, the consumer's insurance coverage options would be maximized.

#### 5. A Privately Operated System

Society should continue to rely upon private enterprise to operate the auto accident compensation system, until and unless it shows itself unwilling or incapable of doing an efficient job. To this end, the compensation system should entail a minimum of compulsion on the consumer for the purchase of private insurance. Individuals should not be compelled to buy more insurance than is necessary to prevent them from becoming a serious problem to themselves, their families or society in the case of an accident. Additional insurance coverage should be made widely available, voluntary and entirely optional on the part of the consumer.

Any different policy would clearly threaten the private nature of the system since compulsion on the citizen to buy will almost certainly lead eventually to pressure upon government to supply the service.

## 6. Maximum Opportunity for Rehabilitation

Although private insurance funding can and should be utilized to pay some of the rehabilitation costs and to sustain the insured's income while participating in prescribed rehabilitation programs (whether designed for vocational or other purposes), the private insurance industry is not well equipped, organized or motivated to provide rehabilitation services directly. The public agencies already in existence afford far greater promise of better future rehabilitation for auto accident victims. Support for these existing agencies should be increased at all levels of government, and consideration should be given to the possibility of requiring private auto insurance carriers to refer victims to rehabilitation routinely when the circumstances of their injuries warrant such referral.

## 7. Minimal Use of Adversary Procedures

Ultimately, most if not all automobile accident loss reparation should take place without the use of adversary procedures. However, in the case of compensation for intangible losses, the fault concept and the adversary system may provide a more acceptable basis than economic losses for making reparations. Even here its use should be limited to truly serious cases, i. e., those involving permanent disfigurement or impairment or, perhaps, those where medical losses exceed a fairly high threshold level.

Good reason argues that there be at least this limitation placed on the right to sue in tort for intangible damages. For example, the threat of suit in minor personal injury cases is widely recognized as the basic reason for the "overpayment" of small claims, frequently at a high multiple of the objectively measurable economic loss involved. The absolute amount of these "overpayments" is very large. On the basis of data drawn from industry claim files, it has been estimated that as much as 34

percent of all bodily injury liability insurance payments were for the intangible losses of non-permanently injured claimants whose measurable economic losses to date of settlement were less than \$5,000. If only claimants with \$2,000 or less in economic loss were counted, the amount of their "overpayments" still constituted almost a third of all payments to all claimants. As noted earlier, more than half the people questioned in the Department's public attitude survey indicated that compensation for pain and suffering should be eliminated if it would reduce insurance costs.

## B. A Specific Recommendation

To explain further the kind of a system that we believe the States should now strive toward, it may be useful to describe what its ultimate configuration might look like following a suitable period of experimentation and testing. It should be emphasized that this is a goal to be achieved over time, not an action blueprint for tomorrow. Moving in stages toward such a goal would allow us to test its virtues and discover its faults, thereby giving us new knowledge that could serve to modify the goal itself. A little observation is worth a great deal of speculation, and State experience with diverse plans will provide us with that opportunity for pilot project testing which must precede massive reform.

This system, as we see it now, should be based on universal, compulsory first-party insurance for all motor vehicle owners covering all economic losses above voluntarily accepted deductibles up to reasonably high limits. Insurers should be free to offer additional insurance coverage above these limits. Victims should retain their present right to sue in tort for specified intangible losses, but the right should be restricted to the truly serious cases. Victims should not be able to sue in tort for economic losses compensated by their own insurers or voluntarily accepted as a deductible. The system should be implemented in stages at the State level. The private insurance industry should service the system, which should continue to be regulated by the several States.

The broad outlines of such a system are proposed below. It should be emphasized that the policy limits and deductibles used in the following description are basically illustrative, although the Department of Transportation's study would indicate that they are roughly in the right order of magnitude.

### 1. Compulsory First-Party Benefits

Under the ultimate configuration of the system, every owner of a motor vehicle should be required to carry

insurance protecting himself, his family and every uninsured passenger or pedestrian suffering injury as a result of an accident involving the insured vehicle for all economic losses they thereby incur for the amounts specified. In addition, the insurance should protect the insured and all members of his family who are part of the same household against losses suffered when they are pedestrians or passengers in some other vehicle.

## 2. Required Medical Benefits

The goal of the ultimate system should be to provide full coverage for all medical benefits with a relatively small permissible deductible per accident but with very high mandatory limit. Any deductible voluntarily assumed by the car owner on behalf of himself and his household or any maximum coverage limit would not apply, however, to the medical losses of uninsured passengers and pedestrians. Included in covered benefits would be all medical rehabilitation expenses within the limits provided. Payment of benefits by a carrier under this coverage should automatically remove the obligation of any other insurance carrier to pay benefits to the extent that the costs are covered by automobile insurance.

## 3. Income Loss Protection

With full implementation of this plan, coverage should be afforded for a relatively high percentage of earned income of the injured or deceased auto accident victim. There should be a short permitted waiting period at the option of the insured for the start of benefits and a permitted monthly benefit ceiling by the insurer of perhaps \$1,000. Voluntarily assumed deductibles or any maximum coverage limit would not apply to pedestrians. Higher benefits for the insured or his family could be made available at the option of the insurer and insured.

This coverage should pay wage continuation benefits whenever an injured person is prevented from working whether as a result of his disability or during his

participation in an approved rehabilitation program. The fact that his rehabilitation program was not necessary for vocational objectives but only to deal with other handicaps should not excuse the payment of wage continuation benefits. The benefit program should provide for modification as provided contractually between the insurer and insured because of changed circumstances, e. g., the remarriage of a surviving spouse, surviving children reaching their majority, etc.

The minimum duration of mandatory income loss protection should, and probably could, be finally established only after some further investigation and experimentation. Initially, minimum duration might be set at three years, except for victims in approved rehabilitation programs whose protection might continue as long as necessary. Longer durations should be optionally available from the beginning and should also be considered for inclusion in the mandatory coverage as experience dictates. A lump sum burial benefit of perhaps \$1,000 per person should be required. Any higher benefits should be optional on the part of the insurer and the insured.

#### 4. Lost Service Benefits

The goal of the system should be to provide coverage for the cost of necessary replacement services for non-employed persons (e. g., housewives) up to a benefit of \$75 per week with a permitted waiting period for benefits at the option of the insured of up to 60 days. Minimum duration of mandatory protection would be the same as for income loss.

#### 5. Property Damage

Ultimately, with the full shift of economic loss compensation to first-party insurance, coverage of damages to property, including the insured vehicle, might be required, but with a permissible deductible referable to the vehicle only at the option of the insured of up to a rather high level, perhaps \$1,000 or a third of the value of the car, and with a

permissible limitation of coverage by the insurer of \$10,000 per accident. There would be no deductible with respect to the non-vehicular property of others damaged in an accident.

#### 6. Elimination of Action for Damages

The goal of the system should be that no recovery for any loss of a type covered by the applicable required coverage would be permitted in any private action for damages. The insured victim's sole recourse for benefits for wage loss, medical loss, lost services, funeral expense and perhaps property damage should be limited to the insured's required coverage and any additional optional coverages that he has elected to purchase, whether under an auto insurance policy or other voluntary loss reparation program.

To the extent that insurance purchasers are willing to pay for duplicate coverages for the same loss and insurers are willing to write duplicate coverage, the practice of cumulating benefits should be allowed. However, unless each policy is clearly stated to be cumulative, only one recovery would be legally permissible with the order of priority among private sources being: (1) auto insurance benefits; and (2) other insurance benefits. In this way, it should be possible to ensure a much better coordination of benefits, with duplicate recovery occurring only where both the insurer and insured had known and agreed about it in advance.

The existing right to sue for damages resulting from negligence in car crashes might be continued for intangible losses, and if so could be subject to one limitation: no person should recover for intangible losses unless he establishes that he suffered permanent impairment or loss of function or permanent disfigurement, or that he incurred personal medical expenses (excluding hospital expenses) as a result of the accident in excess of a rather high dollar threshold. Any dollar threshold initially chosen should

not be considered inviolable but should be reviewed as to its appropriateness at regular, specified intervals.

Drivers should, of course, be permitted to continue to insure against this residual third-party liability.

### C. Cost of Insurance

Almost without exception, every recent probe of consumer attitudes about automobile insurance has shown its cost to lead all other concerns. This is understandable inasmuch as the cost of insurance affects all policyholders, and they are far more numerous than accident victims, while victims are more likely to be affected by their treatment as claimants. An improved system of auto accident compensation such as described above should, once fully implemented, affect the cost of insurance in several ways:

- a. The elimination of "overpayments" of small claims and of compensation of the less serious forms of economic loss should produce cost reduction.
- b. The removal of most compensation decisions from the adversary process should greatly simplify claims adjustment and eliminate much legal and court costs, thereby producing additional substantial cost reduction.
- c. The voluntary acceptance of deductibles by policyholders should produce more savings; the deductibles, themselves, while reducing insurance costs would not be true savings to the insureds, but the concomitant elimination of the insurance mechanism's related administrative costs would be.
- d. The first-party nature of the mandatory insurance coverages should eventually allow insurance companies to rate vehicles as to the value of their protective features and their own damageability. If this encourages the manufacturing of safer vehicles, there would be further insurance cost reduction.

- f. If the first-party nature of the mandatory coverages were to facilitate their marketing on a group basis, and if this produced administrative economies, there might be further savings for those who participate.

Obviously, some features of such a compensation system would work to increase costs:

- a. More victims would participate in benefits and this would increase total costs.
- b. On the average, the more seriously injured victims or the survivors of accident fatalities will receive much greater benefits, and this would also increase total costs. (However, since all drivers would participate in the system, more would be paying premiums, i. e., one analysis of auto insurance coverage in all but six States indicated that about one out of every five drivers was uninsured for auto accident liability.)

It would appear that the true costs of compensating the socially significant losses from motor vehicle accidents should be reduced, since more of the insurance premium dollar would go for needed benefits and less for system expenses. Obviously, the cost to the insurance buyer would depend upon the trends in the frequency and severity of losses, the benefit levels chosen, and his own individual risk potential. To the extent that some potential savings are applied to needed benefits for victims, this too should be counted as a plus. Adequacy and equity of a better compensation system should not yield to cost in our list of priorities.

#### D. Implementation

Without question, any revision of the system along the lines outlined above would entail major changes in existing institutions and practices. The orderly accomplishment of such changes would require further study, cooperation, understanding, planning and the dedicated effort of all concerned, especially of the insuring public.

Mere speculation without observation of the actual operation of a new system is an inadequate basis for immediate and fundamental changes of a national scope in an important area. Experience with diverse plans in the states is essential, and one state has already, this January, taken a step down the road. The states are the best arena in which to solve the problem.

Any new mandatory first-party no-fault coverages could be adopted incrementally, giving both the insuring public and the affected institutions time to gain the necessary understanding and make the necessary adjustments. How much and what kind of compensation should be shifted in any one stage, how many stages there should be or even how long the process should take, or indeed whether it will ultimately prove desirable to go all the way, cannot be answered doctrinarily. Trial will be the best teacher. The important thing is to get started with at least a reasonably agreed-on goal in mind.

One, but by no means the only way to go would be to have the first stage involve the shift of the required medical/hospital loss coverages to a first-party, non-fault basis. Coincident with this step should be the elimination of the right to sue for intangible damages other than those related to death, permanent disfigurement or impairment, or when personal medical losses exceed a given threshold. Before this step is taken, the estimated "cost savings" from the elimination of payments for non-economic losses should be judged at least sufficient to affect any added costs resulting from the higher level of

medical benefits. The public should be able to take this step with some confidence that, overall, insurance costs will not rise because of it.

A suitable period -- hopefully no more than one year or two years -- might then be allowed to elapse during which insurers can gain enough experience with these coverage and recovery rule changes so that insurance rates can be set with confidence before going on to a second phase of the program. This second phase should probably encompass the rest of the personal benefit coverages -- the wage continuation, lost service replacement and funeral benefits. A final phase that would shift all or most of property damage losses to a first-party recovery basis would take place once the system had "digested" the changeover of the personal benefit coverages.

As each phase is entered, damages for the type of loss shifted to mandatory first-party insurance should be removed from consideration in private personal injury litigation, until ultimately only the specified serious intangible losses might still be dealt with in this fashion. Even here if experimentation by insurers with optional, voluntary first-party benefits for these specified types of serious intangible losses were to prove successful, their inclusion under a first-party, no-fault system should also be carefully considered.

Ultimately, the systems of the several states must be compatible. Although there are means available to overcome great diversity, these are cumbersome and a reasonable degree of national uniformity seems best for a number of reasons. Motor vehicle travel is an interstate activity of major proportions and a consistent minimum standard for accident reparations involving all of the motoring public, wherever they travel, would constitute sound public policy. If basic reparations system reform were to be left wholly to individual State initiative without some encouragement, guidance and, at least in an advisory sense, direction from a national perspective, meaningful change might be

exceedingly slow in coming. Should experience with systems of the type we describe prove as successful as we believe it will, the first-party, no-fault concept should become as dominant in the states as the third-party tort system is today. As to the length of the time schedule, a period of perhaps five years seems reasonable, but this judgment can at this juncture be only tentative and certainly should change as future experience dictates. Use of a phased schedule would permit an evolutionary change with ample opportunity for the public policymakers to review and evaluate the performance of the new systems and make any modifications that experience shows are desirable.

### E. The Expected Results

Once implemented, the plan should produce several beneficial results:

A system geared basically to serve the needs of auto victims directly rather than one designed to protect tortfeasors. The latter system obviously was never insurance for the victim; he was no party to the contract. A liability system can easily be defended against the charge that it does not serve all victims. Such a defense only begs the question of the need for insurance for all victims.

A basically first-party insurance system fulfilling the mission of insurance by substituting certainty for uncertainty, both in eligibility for benefits and in amount of benefits payable. As a basically first-party insurance system, the plan lends itself to the prompt, timely payment of benefits for economic loss without the delays associated with the adversary system. Because in most cases benefits would be associated with measurable or ascertainable economic loss, there would be a closer correlation between the loss or damages and the amount of recovery. Thus, the plan avoids having individuals with substantially the same loss reimbursed with substantially different amounts, except to the extent they have voluntarily chosen to be treated differently by employing deductibles or added coverages.

A system much better able to allocate benefit dollars available according to the varying needs of victims. The creation of a proper balance between payments for the less seriously injured cases and the seriously injured would, itself, put benefit dollars to work for a better purpose. The wide spread now existing between settlement amounts and economic loss could be greatly narrowed. The large share of settlements now going to plaintiffs' lawyers would be eliminated.

Claim administration costs would be very sharply curtailed. Because general damages, including lawyers' fees, will no longer be looked upon as a multiple of identifiable losses, a vicious incentive to maximize the latter will no longer exist.

A system lending itself to sounder rating criteria.

As an insurance system, the dollar amount at risk will be better known than under any liability system. What loss a liability insurance policyholder will cause is completely unpredictable because the injured victim is unknown, e. g., a child, a student, a housewife, a retired person, a person earning \$3,000 a year, a person earning \$100,000. To the extent policyholders can be converted from potential wrongdoers to potential beneficiaries in the event of loss, the characteristics of those potentially suffering loss will be ascertainable much more exactly and the consequences of loss more readily determinable.

A system better adapted to the customer's ability to pay. Because the liability system is geared to the potentiality of creating loss to others, premium rates bear most heavily on the youthful and, at least until recently, the aged. Because the potentiality of economic loss to the victim bears a relationship to his economic status, the cost of meeting that potential loss should also be related to his economic status. Moreover, while there is hardly universal agreement, many experts believe that there would also be some narrowing of the wide spread in premium rates that exists today, specifically between adult and youthful drivers and between metropolitan and non-metropolitan areas. A much to be desired corollary is that the public should find the insurance product substantially more available on a voluntary basis than is the current liability product. More applicants should become desirable to insurance companies as insurance risks than is now the case, including some

classes who present special problems today, e. g., the youthful, the elderly and enlisted servicemen.

Greater service orientation of the insurance business.

Unlike the liability system, a basically first-party system would permit the relationship between insurer and insured to be one of mutual respect and trust -- an ingredient essential in an insurance system designed to provide security for the consumer.

A system without incentives to maximize costs.

Any system that determines losses as a multiple of reported actual expenditures provides a well-nigh irresistible incentive to exaggerate, inflate or needlessly build up the actual expenditures, even to the point of providing margins for kickbacks to the providers of service. Such incentives are anti-social as well as the cause for squandering insurance funds and, hence, a source of excessively high insurance premiums. A basically first-party system, properly administered, would not contain such incentives.

A system lending itself to more flexible or efficient merchandising methods. The intensive and extensive degree of underwriting discrimination on an individual basis, the hallmark of the liability system, should lose the justification now ascribed to it. This change in itself would contribute to the effort now underway to exploit various methods of enrolling policyholders in groups that hold some promise of lower acquisition and administrative costs.

Encouragement of competition. Liability insurance companies now insuring about 80 percent of passenger cars and providing medical payments coverage in a substantial majority of cases, will obviously be in the best position in the market to merchandise an expanded first-party coverage. Some of these carriers, now restricting their auto insurance writings because of bad underwriting experience, may be expected to

reverse their competitive posture from one of contraction to one of expansion. Other insurers, intimidated by the bearish industry attitude regarding all forms of liability insurance but experienced with first-party coverages, may be encouraged to enter the field. The overall prospect would, therefore, be one of increased rather than decreased competition. In this connection, relatively small insurers writing first-party coverages have proved viable as they have in the liability field.

Effect on State regulation. If the greater certainty associated with a first-party insurance system led to a freer, larger, more competitive market, regulation of auto insurance rates as now known might safely be relaxed as long as regulatory safeguards against insolvency and unsound rate cutting to destroy competition were maintained. Rather, the energies and talents of State regulatory authorities could be devoted to policing the real substance of insurance administration, i. e., the assurance that the coverages being provided meet established socially responsible standards and that the benefits are being paid in accordance with the policy provisions.

APPENDIX A  
 AUTO INSURANCE AND COMPENSATION STUDY  
 ADVISORY COMMITTEE MEMBERS

Industry Advisory Committee  
 Frank L. Farwell, Chairman

John Adam, Jr., Worcester Mutual Fire Insurance Company  
 Harold Scott Baile, General Accident Group  
 William O. Bailey, Aetna Life and Casualty Company  
 John C. Bates, Jr.,<sup>1</sup> General Motors Corporation  
 Judson B. Branch, Allstate Insurance Company  
 Harvey E. Brazer, Professor of Economics, University of Michigan  
 Paul Chenea, General Motors Corporation  
 Charles B. Chrisman, National Association of Insurance Agents, Inc.  
 Richard Dann, Detroit Automobile Inter-Insurance Exchange  
 Frank L. Farwell, Liberty Mutual Insurance Companies  
 Bruce B. Grynbaum, Professor of Clinical Rehabilitation Medicine, Bellevue Hospital, New York City  
 William W. Hagerty, Drexel Institute of Technology  
 William J. Hartnett, National Association of Mutual Insurance Agents  
 T. Lawrence Jones, American Insurance Association  
 Harry A. Lansman, Kemper Insurance Group  
 Vestal Lemmon, National Association of Independent Insurers  
 Paul F. Lorenz, Ford Motor Company  
 Thomas F. Malone, Travelers Insurance Company  
 Walter J. McNerney, Blue Cross Association  
 Morton D. Miller, Equitable Life Assurance Society of the United States  
 John J. Nevin,<sup>2</sup> Ford Motor Company  
 Robert A. Rennie, Nationwide Insurance Company

---

1. Mr. Bates replaced Dr. Chenea.

2. Mr. Nevin replaced Mr. Lorenz.

Edward B. Rust, State Farm Mutual Insurance Company  
Bradford Smith, Jr., Insurance Company of North  
America

Herman M. Somers, Professor of Politics and Public  
Affairs, Princeton University

Sydney Terry, Engineering Division, Chrysler  
Corporation

Robert E. Vanderbeek, League Life Insurance Company

Paul S. Wise, American Mutual Insurance Alliance

Legal Advisory Committee

Tom C. Clark, Chairman

Tom C. Clark, Associate Supreme Court Justice  
(retired)

Gordon R. Close, International Association of Insurance  
Counsel

Alfred Conard, Professor of Law, University of  
Michigan

John J. Conger, University of Colorado Medical School

William T. Gossett, American Bar Association

Harry Kalven, Jr., Professor of Law, University of  
Chicago

Robert E. Keeton, Professor of Law, Harvard  
University

Orville Richardson, American Trial Lawyers  
Association

Maurice Rosenberg, Professor of Law, Columbia  
University

Richard Schwartz, Professor of Sociology, Northwestern  
University

Craig Spangenberg, American Trial Lawyers  
Association

John Van Voorhis, Judge (retired), New York

Consumer Advisory Committee

Colston E. Warne, Chairman

William M. Bagnall, American Motorcycle Association

William D. Bechill, President's Council on Aging

Andrew J. Biemiller, AFL-CIO  
 Marshall Cobleigh, Speaker of the House of  
 Representatives, State of New Hampshire  
 A. Leon Higginbotham, Jr., Judge, United States  
 District Court, Eastern District of Pennsylvania  
 Richard H. Holton, Dean, University of California  
 Business School, Berkeley  
 Arnold Pinkney, Pinkney-Perry Insurance Agency, Inc.  
 Harold Russell, President's Committee on Employment  
 of the Handicapped  
 Paul A. Wagner, Community Action Program, United  
 Auto Workers of America  
 Colston E. Warne, Board of Directors, Consumers  
 Union

Economic Regulation Advisory Committee

Spencer L. Kimball, Chairman

Herbert S. Denenberg, Professor of Insurance,  
 University of Pennsylvania  
 Governor Buford Ellington (Tennessee), Council of  
 State Governments  
 James Johnson,<sup>3</sup> National Governors' Conference  
 Spencer L. Kimball, Dean, University of Wisconsin Law  
 School  
 Samuel M. Loescher, Professor of Economics, Indiana  
 University  
 Richard S. L. Roddis, Professor of Law, University of  
 Washington  
 Richard E. Stewart, Superintendent of Insurance, New  
 York  
 Lorne R. Worthington, Commissioner of Insurance,  
 Iowa

Casualty Actuarial Society Advisory Committee

Paul J. Liscord, Chairman

Robert A. Bailey, Insurance Bureau, State of Michigan

3. Mr. Johnson participated as Governor Ellington's  
 representative.

Harold E. Curry, State Farm Mutual Insurance  
Company

Clyde H. Graves, American Mutual Insurance Alliance

Charles C. Hewitt, Jr., Allstate Insurance Company

M. Stanley Hughey, Lumbermen's Mutual Casualty  
Company

Jeffrey T. Lange, Insurance Rating Board

Joseph Linder, Consulting Actuary

Paul J. Liscord, The Travelers Insurance Companies

Philip O. Presley, American Mutual Liability Insurance  
Company

Paul W. Simoneau, Aetna Life and Casualty Company



## AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

MONDAY, MAY 3, 1971

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
Washington, D.C.

The committee met, pursuant to notice, at 11:15 a.m. in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the committee) presiding.

Present: Senators Magnuson, Hart, Moss, and Cook.

### OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

Today the Senate Commerce Committee resumes hearings on proposals for changing the present automobile compensation system. During the next 10 days the committee will receive testimony from a full spectrum of witnesses on four specific legislative proposals—S. 945, S. 946, S. 976, and Senate Concurrent Resolution 23.

At the beginning of these hearings it might be useful to briefly take stock of where we are in terms of understanding the present automobile compensation system. For many years criticisms have accused our present auto insurance system, of perpetuating human misery and promoting waste. In order to evaluate rationally these accusations, Congress asked a jury of experts to report on auto compensation. The Department of Transportation did make that study, it was of several months' duration, and submitted to us just a few days ago their report.

The basis of that report is of course what we are going to discuss in these hearings. It states, in essence, that American motorists pay \$14 billion annually for auto insurance. And for that \$14 billion they receive about \$7 billion in benefits to pay for about \$11 billion in compensable economic loss.

Many of us feel that if this country is to have a workable compensation system, the benefit dollars are going to have to be increased to cover the losses resulting from auto accidents. And those benefit dollars are going to have to be distributed to auto accident victims on an equitable basis related to the amount of loss each suffers. Only in this way can American motorists be "insured."

But how can we pay for this increase in benefit dollars? We could merely mandate more coverage and collect more money to pay for it. But if we did this we would simply be adding to the already severe economic waste and financial burden of the existing system.

What we must do is make the dollars we are now collecting work better for us. In other words, we must improve the efficiency of the

present benefit delivery system. Of the \$14 billion we pay, we must return in benefits at least up to the amount of their compensable economic loss. Efficiency for an insurance system should easily be attainable.

For example, Blue Cross-Blue Shield, though guilty of many omissions, nevertheless has a 95-percent efficiency. For every dollar it collects, 95 cents is paid out, according to their figures, in benefits. This compares to the present auto insurance system which, according to the best statistics we can find, pays no more than about 50 cents for every dollar collected.

But we cannot be content with merely improving the efficiency of the benefit delivery system. We all have an obligation to reduce the human misery and minimize the economic loss resulting from auto accidents. By building cars safer and stronger we could reduce by several billion dollars the total premium cost to American drivers. Combine these safer and stronger cars with better highway construction, renewed law enforcement efforts, better vehicle inspections, and active antidrinking-driver programs, and an additional cost savings would result.

Our goals, then, in these hearings are to see if we can :

(1) Find an automobile compensation system which compensates all victims of automobile accidents for at least their compensable economic loss;

(2) Find a system of delivering benefits whose efficiency does just this;

(3) Find new ways of reducing losses which result from automobile accidents by: (a) Preventing accidents and, (b) By reducing loss when accidents do occur.

It goes without saying that some other members of my committee and I have some ideas on what we must do to reform our compensation system. But we are going to approach these hearings with an open mind and hope that we will find that which we seek—a new, less costly, more humane automobile compensation system.

(The bills and agency comments follow :)

92<sup>d</sup> CONGRESS  
1<sup>st</sup> Session

# S. 945

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 17), 1971

Mr. HART (for himself and Mr. MAGNUSON) introduced the following bill;  
which was read twice and referred to the Committee on Commerce

## A BILL

To regulate interstate commerce and to provide for the general welfare by requiring certain insurance as a condition precedent to using the public streets, roads, and highways in order to have an efficient system of motor vehicle insurance which will be uniform among the States, which will guarantee the continued availability of such insurance, and the presentation of meaningful price information, and which will provide sufficient, fair, and prompt payment for rehabilitation and losses due to injury and death arising out of the operation and use of motor vehicles within the channels of interstate commerce, and otherwise affecting such commerce.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That this Act may be cited as the "Uniform Motor Vehicle*
- 4 *Insurance Act".*

II

U.C. BERKELEY LIBRARY

## DEFINITIONS

1

2       SEC. 2. As used in this Act—

3       (1) The term “motor vehicle” means any vehicle  
4 driven or drawn by electrical or mechanical power manufac-  
5 tured primarily for use on the public streets, roads, and  
6 highways, except any vehicle operated exclusively on a rail  
7 or rails.

8       (2) (A) The term “insured motor vehicle” means a  
9 motor vehicle insured under a policy of insurance which  
10 meets the requirements of section 5 of this Act.

11       (B) The term “uninsured motor vehicle” means a  
12 motor vehicle with respect to which insurance provided un-  
13 der section 5 of this Act is not applicable at the time of  
14 the accident, or with respect to which the insurer nominally  
15 providing such insurance denies coverage, or is financially  
16 unable to fulfill its obligation.

17       (3) The term “owner” means a person who holds the  
18 legal title to a motor vehicle as defined in subsection (1)  
19 of this section, or in the event a motor vehicle is the subject  
20 of a security agreement or lease with option to purchase  
21 with the debtor or lessee having the right to possession,  
22 then the debtor or lessee shall be deemed the owner for the  
23 purpose of this Act.

24       (4) The term “person” means any individual, partner-

1 ship, corporation, association, trust, syndicate, or other en-  
2 tity.

3 (5) The term "insurer" means any enterprise engaged  
4 in the business of issuing motor vehicle insurance policies.

5 (6) "Operation or use of a motor vehicle" includes  
6 loading or unloading the vehicle, but does not include con-  
7 duct within the course of a business of repairing, serving, or  
8 otherwise maintaining vehicles unless the conduct occurs out-  
9 side the business premises.

10 (7) The term "motor vehicle accident" means a spe-  
11 cifically unexpected occurrence arising out of the operation  
12 or use of a motor vehicle as a motor vehicle.

13 (8) The term "injury" means bodily injury, catas-  
14 trophic harm, sickness, or disease caused by a motor vehicle  
15 accident while in or upon or entering into or alighting from,  
16 or through being struck by, a motor vehicle.

17 (9) The term "catastrophic harm" means permanent  
18 and total disability (including death at any time resulting  
19 from injury) or permanent and partial disability of 70 per  
20 centum or more. The term "catastrophic harm" includes  
21 disfigurement that is permanent, severe, and irreparable.

22 (10) The term "economic loss" means in the case of  
23 injury or death—

24 (A) all appropriate and reasonable expenses nec-

U.C. BERKELEY JOURNAL

1      necessarily incurred for medical, hospital, surgical, profes-  
2      sional nursing, dental, ambulance, and prosthetic serv-  
3      ices;

4            (B) all appropriate and reasonable expenses nec-  
5      essarily incurred for physical and occupational therapy  
6      and rehabilitation;

7            (C) an amount equal to 85 per centum of the  
8      monthly earnings at the time of the injury or \$1,000,  
9      whichever is less, for as long a period as the injury  
10     causes the inability to engage in gainful activity sub-  
11     stantially the same or similar to that engaged in prior  
12     to the injury: *Provided, however,* That in the case of  
13     injury such period shall not exceed thirty months, and  
14     that in the case of death, an amount which shall not  
15     exceed \$30,000;

16           (D) all appropriate and reasonable expenses nec-  
17     essarily incurred as a result of such injury, including,  
18     but not limited to, expenses incurred in obtaining serv-  
19     ices in substitution of those that the injured person would  
20     have performed for the benefit of himself or his family.

21           (11) The term "earnings" means the pay or wages of  
22     an employee before any deductions, and the reasonable value  
23     of the services of a self-employed person before any deduc-  
24     tions.

25           (A) "Monthly earnings at the time of the injury"

1 shall be deemed to be one-twelfth of the average annual  
2 earnings at that time. If earnings are received on a  
3 weekly basis, the weekly equivalent of the monthly  
4 earnings is deemed one-fifty-second of the average annual  
5 earnings.

6 (B) Average annual earnings are determined as  
7 follows:

8 (i) If the person worked in the employment or  
9 self-employment in which he was employed or self-  
10 employed at the time of his injury during substan-  
11 tially the whole year immediately preceding the in-  
12 jury and the employment was in a position, or the  
13 self-employment was of such nature, that an annual  
14 rate of pay—

15 (I) was fixed, the average annual earnings  
16 are the annual rate of pay; or

17 (II) was not fixed, the average annual  
18 earnings are the product obtained by multiply-  
19 ing his daily earnings, or the average thereof if  
20 the daily earnings have fluctuated, by 300 if he  
21 was employed or self-employed on the basis of a  
22 6-day workweek, 280 if employed, or self-em-  
23 ployed on the basis of a  $5\frac{1}{2}$ -day workweek, and  
24 260 if employed or self-employed on a basis of a  
25 5-day workweek.

1           (ii) If the person did not work in the employ-  
2           ment or the self-employment in which he was em-  
3           ployed at the time of his injury substantially the  
4           whole year immediately preceding the injury, but  
5           the employment or self-employment would have af-  
6           forded employment or self-employment for substan-  
7           tially a whole year, the average annual earnings are  
8           a sum equal to the average annual earnings of an  
9           employee or self-employed person of the same class  
10          working substantially the whole immediately preced-  
11          ing year in the same or similar employment or self-  
12          employment in the same or neighboring place as  
13          determined under subsection (11) (B) (i) of this  
14          section.

15          (12) The term "net economic loss" means, in the case of  
16          injury or death "economic loss" reduced (but not below  
17          zero) by the amount of—

18               (A) any benefit or payment received, or entitled to  
19               be received, for losses resulting from such injury or death  
20               under any private or public insurance or plan or other  
21               source of benefits: Except, benefit or payment received,  
22               or entitled to be received—

23                       (i) in discharge of familial obligations of sup-  
24                       port;

25                       (ii) by way of succession at death;

1 (iii) as proceeds of life insurance;  
2 (iv) as gratuities;  
3 (v) as proceeds of any private or public insur-  
4 ance or plan or other source of benefits containing  
5 explicit provisions making its benefits supplemental  
6 to those paid in accordance with the provisions of  
7 section 5 (a) of this Act.

8 (I) If any private or public insurance or  
9 plan or other source of benefits does not provide  
10 that its benefits shall be supplemental to those  
11 under section 5 (a) of this Act, or that the bene-  
12 fits under said section 5 (a) shall be deducted  
13 from its benefits, economic loss shall be reduced  
14 by the amount of any benefit or payment re-  
15 ceived, or entitled to be received, from such pri-  
16 vate or public insurance or plan or other source  
17 of benefits.

18 (13) The term "without regard to fault" means irrespec-  
19 tive of fault as a cause of injury or death, and without appli-  
20 cation of the principle of liability based on negligence.

21 (14) The term "interstate commerce" means trade or  
22 commerce among the several States, or between the Dis-  
23 trict of Columbia or any possession of the United States and  
24 any State or other possession, or within the District of  
25 Columbia.

U. S. BUREAU OF INDIAN AFFAIRS

1       (15) The term "Secretary" means the Secretary of  
2 Transportation.

3       (16) The term "State" means any State or possession of  
4 the United States, the District of Columbia, and the Com-  
5 monwealth of Puerto Rico.

6       CONDITIONS OF OPERATION: REGISTRATION AND FEES

7       SEC. 3. (a) After the effective date of this section, no  
8 person shall register nor knowingly operate or use a motor  
9 vehicle as defined in section 2 (1) of this Act upon the public  
10 streets, roads, and highways of any State at any time unless—

11           (1) Such motor vehicle is insured under a policy of  
12 insurance which meets the requirements of section 5 of  
13 this Act, pursuant to such rules and regulations (includ-  
14 ing those determining the manner and term of proof of  
15 such insurance) as the Secretary shall lawfully prescribe.

16           (A) The requirements of this section may be  
17 satisfied by any person by providing a surety bond,  
18 proof of qualifications as a self-insurer, or other  
19 securities affording security substantially equivalent  
20 to that afforded under section 5 of this Act, as de-  
21 termined and approved by the Secretary.

22           (b) No State shall require the purchase or acquisition  
23 of insurance or any other security as a condition to the oper-  
24 ation or use of any motor vehicle upon the public streets,

1 roads, and highways of such State, other than the insurance  
2 required under section 5 of this Act.

3 (c) The provisions of this section and section 4 of this  
4 Act shall take effect one year and six months after the date  
5 of enactment of this Act.

6 (d) Any person who knowingly violates the provisions  
7 of subsection (a) of this section shall be guilty of a mis-  
8 demeanor and upon conviction thereof, shall be punished  
9 by a fine not to exceed \$1,000 or imprisonment for a period  
10 of not to exceed one year, or both.

11 **TORT EXEMPTION: LIABILITY FOR CATASTROPHIC HARM**

12 **SEC. 4.** No owner, operator, or user of an insured motor  
13 vehicle shall be liable for tort damages of any nature occa-  
14 sioned by bodily injuries arising out of the negligent oper-  
15 ation or use of such vehicle except in cases of catastrophic  
16 harm. In such cases there may be a recovery for economic  
17 loss in excess of that received, or entitled to be received under  
18 this Act, as well as for other elements of damage.

19 **INSURANCE REQUIREMENTS**

20 **SEC. 5.** In order to meet the requirements of section 3

21 (a) and (b) of this Act, an insurance policy shall provide—

22 (a) Net economic loss benefits for injury and death as  
23 follows:

24 (1) Except as otherwise provided in paragraph (3),

U.C. BERKELEY LIBRARY

1 the insurer shall pay, without regard to fault, to any person,  
2 including the owner, operator, or user of an insured motor  
3 vehicle, an amount equal to the net economic loss sustained  
4 by such person for injury as defined in section 2 (7) of this  
5 Act.

6 (2). Except as otherwise provided in paragraph (3), the  
7 insurer shall pay, without regard to fault, to the legal repre-  
8 sentative of any person, including the owner, operator, or  
9 user of an insured motor vehicle, whose death is the result  
10 of injury, for the benefit of the surviving spouse and any  
11 dependent (as defined in section 152 of the Internal Rev-  
12 enue Code of 1954) of such person, an amount equal to  
13 the net economic loss sustained by such spouse and dependent  
14 as a result of the death of such person.

15 (3) No payment shall be made for net economic loss  
16 sustained by—

17 (A) the occupants of another motor vehicle; or

18 (B) the operator or user of a motor vehicle while  
19 committing a felony, or operating or using with the  
20 specific intent of causing injury or damage, or operating  
21 or using a motor vehicle as a converter without a good  
22 faith belief that he is legally entitled to operate or use  
23 such vehicle.

24 (4) Payments for net economic loss shall be made as  
25 such loss is incurred except that in the case of death, pay-

1 ment for such loss shall be made immediately: *Provided*,  
2 That amounts of net economic loss unpaid thirty days after  
3 the insurer has received reasonable proof of the fact and  
4 amount of loss realized, and demand for payment thereof,  
5 shall thereafter bear interest at the rate of 2 per centum per  
6 month.

7 (5) A claim for net economic loss based upon injury  
8 or death to a person who is not an occupant of any motor  
9 vehicle involved in an accident may be made against the  
10 insurer of any involved vehicle: *Provided*, That the insurer  
11 against whom the claim is asserted shall process and pay the  
12 claim as if wholly responsible: *Provided, however*, That such  
13 insurer is thereafter entitled to recover from the insurers of  
14 all other involved vehicles proportionate contribution for  
15 the benefits paid and the costs of processing the claim.

16 (6) Net economic loss sustained by any occupant,  
17 operator, or user of a commercial motor vehicle shall be  
18 paid by the insurer of such commercial motor vehicle.

19 (7) (A) When one or more of the motor vehicles in-  
20 volved in an accident is larger than an ordinary passenger  
21 automobile, the insurer of the larger vehicle shall be respon-  
22 sible for a percentage of any net economic loss paid to occu-  
23 pants involved in the accident.

24 (i) For the purpose of subsection (a) (7) (A) and  
25 (a) (7) (B) of this section, the term "ordinary pas-

1       senger automobile” means any motor vehicle (including  
2       a motorcycle or motorscooter) used primarily for the  
3       transportation of passengers, having a seating capacity  
4       of less than ten passengers, having two or less axles, and  
5       weighing, without cargo or passengers, less than six  
6       thousand pounds.

7       (B) The Secretary shall classify, by rules and regula-  
8       tions under the procedures established in section 4 of the  
9       Administrative Procedure Act, as amended (60 Stat. 237;  
10      5 U.S.C. 553), all motor vehicles larger than ordinary pas-  
11      senger automobiles into reasonable categories, and shall  
12      assign to each category a percentage of responsibility for net  
13      economic loss sustained by occupants of other vehicles:  
14      *Provided*, That such classifications and percentages of re-  
15      sponsibility shall be based upon the increased severity of  
16      injury, caused by large vehicles in comparison to ordinary  
17      passenger automobiles: *Provided further*, That if a larger  
18      vehicle is liable for more than 70 per centum of the net  
19      economic loss, such insurer may control the processing of  
20      any claims for such loss and be entitled to obtain contribu-  
21      tion from insurers liable for the remainder of the benefits.

22       (b) Optional catastrophic harm insurance as follows:

23       (1) At the option of the insured, the insurer shall offer  
24       a provision for legal liability for catastrophic harm arising  
25       out of the negligent operation or use of a motor vehicle, to a

1 limit of, at least \$50,000 for any one person, and \$300,000  
2 for all persons in any one accident; and, at the option of the  
3 insured, the insurer shall offer a provision undertaking to pay  
4 to the insured all sums, not in excess of the limits of liability  
5 provided by the insured's liability insurance, which such in-  
6 sured is legally entitled to recover as damages for cata-  
7 strophic harm arising out of operation or use of any uninsured  
8 motor vehicle.

9 (c) Any such policy of insurance described in this  
10 section may contain—

11 (1) additional coverages and benefits with respect  
12 to any injury, death, property damage, or any other  
13 loss from motor vehicle accidents;

14 (2) terms, conditions, exclusions, and deductible  
15 clauses; consistent with the required provisions of such  
16 policy and approved by the Secretary, who shall only  
17 approve terms, conditions, exclusions, deductible clauses,  
18 coverages, and benefits which are fair and equitable,  
19 and which limit the variety of coverage available so as  
20 to give buyers of insurance reasonable opportunity to  
21 compare the cost of insuring with various insurers.

22 (d) (1) Any application for a policy of insurance which  
23 meets the requirements of subsection (a) of this section  
24 may not be rejected by an insurer, nor shall such policy of  
25 insurance once issued, be canceled or refused renewal, by an

U.C. BERKELEY LIBRARY

1 insurer except for (A) suspension or revocation of the li-  
2 cense of an owner or principal operator to operate a motor  
3 vehicle, or (B) failure to pay the premium for such policy  
4 after reasonable demand therefor: *Provided*, That twenty  
5 days written notice is given to the insured with respect to  
6 paragraphs (A) and (B) of this subsection.

7 (2) An insurer may reject or refuse to accept additional  
8 applications for, or policies of, insurance which meet the  
9 requirements of subsection (a) of this section if the domicil-  
10 iary State supervisory authority of such insurer deems in  
11 writing that the solvency of such insurer would be impaired  
12 by the writing of additional policies of such insurance.

13 (3) Whoever knowingly violates, or conspires to vio-  
14 late, the provisions of subsection (d) (1) of this section  
15 shall be guilty of a misdemeanor and upon conviction thereof  
16 shall be punished by a fine not to exceed \$1,000 for each  
17 violation.

18 **UNIFORM STATISTICAL PLAN AND PRICE INFORMATION**

19 **SEC. 6. (a)** The Secretary shall, after consultation with  
20 the insurers and State insurance supervisory authorities,  
21 promulgate a common, uniform statistical plan for the allo-  
22 cation and compilation of claims and loss experience data  
23 for each coverage under section 5 of this Act, and upon  
24 promulgation, such plan shall be followed by every insurer  
25 writing policies of insurance which meet the requirements

## 15

1 of section 5 of this Act, and by every rating or advisory or-  
2 ganization or statistical agent named by any such insurer  
3 to gather, compile, or report claims and loss experience data.

4 (b) Such statistical plan shall contain data pertaining  
5 to the claims and loss experience for the classes of risk in  
6 each rating territory within each coverage under section 5  
7 of this Act: *Provided, however,* That such statistical plan  
8 shall not contain data pertaining to expenses for adjusting  
9 losses, underwriting expenses, general administration ex-  
10 penses, or any other expense experience for any class of  
11 risk in each rating territory within the coverages under sec-  
12 tion 5 of this Act: *Provided further,* That in carrying out  
13 the provisions of this section, no insurer, rating, or advisory  
14 organization, or statistical agent, or any other association of  
15 insurers, shall pool, or in any manner combine, any such  
16 expenses or expense experience, or otherwise act in concert  
17 with respect thereto.

18 (c) Every insurer writing policies of insurance which  
19 meet the requirements of section 5 of this Act, and every  
20 rating or advisory organization or statistical agent named  
21 by such insurer to gather or compile claims and loss experi-  
22 ence data, shall report such data in accordance with the pro-  
23 visions of the statistical plan required by this section at such  
24 times and in such manner as the Secretary shall by rules and  
25 regulations lawfully prescribe.

1       (d) The Secretary shall require standard uniform and  
2 standard minimal—

3           (1) policy provisions for each coverage under sec-  
4 tion 5 of this Act;

5           (2) classes of risk and rating territories for each  
6 coverage under section 5 of this Act;

7 in order to accomplish the purposes of the statistical plan  
8 required by this section.

9       (e) Every insurer writing policies of insurance which  
10 meet the requirements of section 5 of this Act shall provide  
11 the Secretary with the actual rate or premium being charged  
12 for each class of risk in each rating territory within each  
13 coverage under section 5 of this Act at such times and in such  
14 manner as the Secretary shall by rules and regulations  
15 prescribe.

16       (f) The Secretary may, after consultation with the in-  
17 surers and State insurance supervisory authorities, appoint a  
18 statistical agent or agents, to receive, gather, compile, report,  
19 and analyze the claims and loss experience data, and actual  
20 rates or premiums, specified in subsections (c) and (e) of  
21 this section.

22       (g) From time to time, but not less than semiannually,  
23 the Secretary shall analyze and freely and fully make avail-  
24 able to the State insurance supervisory authorities and to  
25 the general public, with respect to every insurer writing

1 policies of insurance which meet the requirements of sec-  
2 tion 5 of this Act, a comparison of such insurer's indicated  
3 rate based upon the claims and loss experience data for  
4 each class of risk in each rating territory within each cov-  
5 erage with the actual rate or premiums being charged by  
6 the insurer for such class of risk in each rating territory  
7 within such coverage. The claims and loss experience data,  
8 and actual rates or premiums specified in subsections (c)  
9 and (e) of this section shall be made available to the general  
10 public at such times and in such manner as the Secretary  
11 shall by rules and regulations prescribe.

12 (h) Any insurer writing policies of insurance which  
13 meet the requirements of section 5 of this Act, or any rating  
14 or advisory organization or statistical agent named by any  
15 such insurer to gather, compile or report claims and loss  
16 experience data, who willfully fails to:

17 (1) follow the statistical plan promulgated in ac-  
18 cordance with subsections (a) and (b) of this section,  
19 or

20 (2) observe the prohibition in subsection (b) of  
21 this section against pooling, or in any manner combin-  
22 ing expense experience, or

23 (3) report to the Secretary, or his statistical agent  
24 or agents, the claims and loss experience data as re-  
25 quired in subsections (c) and (f) of this section, or

1           (4) follow any standard uniform or standard mini-  
2           mal policy provisions or classes of risk promulgated by  
3           the Secretary as required in subsection (d) of this sec-  
4           tion, or

5           (5) provide the Secretary, or his statistical agent  
6           or agents, with the actual rate or premium being charged  
7           for each class of risk in each rating territory within such  
8           coverage as required in subsections (e) and (f) of this  
9           section,

10          shall be guilty of a misdemeanor, and upon conviction  
11          thereof, shall be punished by a fine not to exceed \$5,000 for  
12          each violation.

13                               **ASSIGNED CLAIMS PLAN**

14                               **Organization and Maintenance**

15          SEC. 7. (a) The Secretary shall, after consultation with  
16          the insurers and State insurance supervisory authorities, or-  
17          ganize an assigned claims bureau and assigned claims plan  
18          in each State. Upon organization, each such bureau and  
19          plan shall be maintained, subject to regulation by the applica-  
20          ble State insurance supervisory authority, by the insurers  
21          writing policies of insurance under section 5 of this Act in  
22          such State. In default of the continued maintenance of an  
23          assigned claims bureau and assigned claims plan in any  
24          State in a manner considered by the Secretary to be con-

1 sistent with the provisions of this Act, the Secretary shall  
2 maintain such bureau and plan.

3 Costs of Operation

4 (b) The costs incurred in the operation of each assigned  
5 claims bureau and assigned claims plan shall be assessed  
6 against insurers in each State by the applicable State insur-  
7 ance supervisory authority according to rules and regulations  
8 that assure fair allocations among such insurers writing poli-  
9 cies of insurance under section 5 of this Act in the State, on  
10 a basis reasonably related to the volume of insurance under  
11 subsection (a) of section 5 of this Act.

12 Insurers Required to Participate

13 (c) Every insurer writing policies of insurance under  
14 section 5 of this Act is required to participate in the as-  
15 signed claims bureau and assigned claims plan in each and  
16 every State in which such insurer is authorized to write such  
17 policies of insurance.

18 Persons Entitled to Claim Through Assigned Claims Plan:

19 Benefits to Which Entitled

20 (d) Except as provided in subsection (e) of this sec-  
21 tion, each person sustaining injury (as defined in section  
22 2 (7) of this Act) may obtain the insurance benefits under  
23 subsection (a) of section 5 of this Act through the assigned

1 claims bureau and assigned claims plan in the State in which  
2 such person resides if—

3 (1) no such insurance benefits are applicable to the  
4 injury or death; or

5 (2) no such insurance benefits applicable to the  
6 injury or death can be identified; or

7 (3) the only identifiable insurance benefits under  
8 subsection (a) of section 5 of this Act applicable to  
9 the injury or death are, because of financial inability of  
10 one or more insurers to fulfill their obligations, inadequate to provide such benefits.

12 **Persons Disqualified From Receiving Benefits**

13 (e) A person shall be disqualified from receiving benefits  
14 through any assigned claims bureau and assigned claims  
15 plan established pursuant to this Act if—

16 (1) such person is disqualified under section 5 (a)  
17 (3) (B) of this Act from receiving the insurance benefits  
18 under section 5 (a) of this Act, or

19 (2) such person is the owner or registrant of a  
20 motor vehicle which was not insured under section 5 (a)  
21 of this Act at the time of its involvement in the accident  
22 out of which such person's injury arose.

23 (f) A claim or claims arising from injury or death to  
24 one person sustained in one accident and brought through  
25 the applicable assigned claims plan shall be assigned to

1 one insurer, or to the applicable assigned claims bureau,  
2 which after such assignment shall have rights and obligations  
3 as if having issued a policy of insurance containing the  
4 benefits under subsection (a) of section 5 of this Act.

#### 5 Principle of Assignment

6 (g) The assignment of claims shall be made according  
7 to rules and regulations that assure fair allocation of the  
8 burden of assigned claims among insurers doing business in  
9 the particular State on a basis reasonably related to the  
10 volume of insurance written under subsection (a) of section  
11 5 of this Act.

#### 12 Notification of Bureau by Claimant for Assignment of His 13 Claim

14 (h) A person or his legal representative claiming  
15 through an assigned claims plan shall notify the applicable  
16 bureau of his claim within the time that would have been  
17 allowed for filing an action for the insurance benefits under  
18 subsection (a) of section 5 of this Act had there been in  
19 effect identifiable coverage applicable to the claim. The  
20 bureau shall promptly assign the claim and notify the claim-  
21 ant of the identity and address of the insurer to which the  
22 claim is assigned, or against the bureau if the claim is assigned  
23 it. No action by the claimant against the insurer to which his  
24 claim is assigned, or against the bureau if the claim is assigned  
25 to it, shall be commenced later than sixty days after receipt

1 of notice of the assignment or the last date on which the  
2 action might have been commenced had it been against the  
3 insurer of identifiable coverage applicable to the claim, which-  
4 ever is later.

5 **Costs of Assigned Claims Plan**

6 (i) All reasonable and necessary costs incurred in the  
7 handling and disposition of assigned claims, including amount  
8 paid pursuant to assessments under subsection (b) of this  
9 section, may be considered in making or regulating rates for  
10 the insurance under subsection (a) of section 5 of this Act:  
11 *Provided, however,* That if such costs are considered in the  
12 rates or premiums for such insurance, the pure loss portion  
13 of such costs shall be reported separately under the uniform  
14 statistical plan provided for by section 6 of this Act, and that  
15 portion of the actual rate or premium being charged for such  
16 insurance attributable to the entire amount of such costs in-  
17 curred in the handling and disposition of assigned claims  
18 shall be reported separately under subsection (e) of section  
19 6 of this Act.

20 **Reimbursement**

21 (j) An insurer who makes an assigned claims payment  
22 shall be reimbursed, without regard to fault, by the owner or  
23 registrant of a motor vehicle which was not insured under  
24 section 5 (a) of this Act at the time of the accident out of  
25 which such assigned claim arose.

**1 INSURERS' FRAUDULENT OR ARBITRARY DENIAL OF CLAIMS**

**2 SEC. 8.** Within the discretion of any court, a person  
**3 making claim** under a policy of insurance which meets the  
**4 requirements** of section 5 of this Act may be allowed an  
**5 award** of a reasonable sum for attorney's fee and all reason-  
**6 able costs** of suit where the insurer's denial of all or part of  
**7 the claim** was fraudulent or so arbitrary as to have no reason-  
**8 able foundation.**

**9 FRAUDULENT OR EXCESSIVE CLAIMS**

**10 SEC. 9.** Within the discretion of any court, an insurer  
**11 or any person** who qualifies as a self-insurer under para-  
**12 graph (A)** of section 3 (a) (1) may be allowed an award  
**13 of a reasonable sum** as attorney's fee and all reasonable costs  
**14 of suit** for its defense against a person making claim against  
**15 such insurer or self-insurer** where such claim was fraudulent  
**16 or so excessive** as to have no reasonable foundation, and such  
**17 attorney's fee** and all such reasonable costs of suit so awarded  
**18 may be treated** as an offset against any benefits due or to  
**19 become due** to such person.

**20 ADMINISTRATION**

**21 SEC. 10.** In order to carry out the provisions and fulfill  
**22 the purpose** of this Act, the Secretary shall—

**23 (a)** consult with representatives of State agencies  
**24 charged** with the regulation of the business of insurance,

1       representatives of the private insurance business, and  
2       such other persons, organizations, and agencies of the  
3       Federal, State, or local governments as he deems neces-  
4       sary; and

5           (b) make, promulgate, amend, and repeal such  
6       rules and regulations under the procedures established in  
7       section 4 of the Administrative Procedure Act, as  
8       amended (60 Stat. 237; 5 U.S.C. 553), as he deems  
9       necessary.

10           **AUTHORIZATION AND APPROPRIATIONS**

11       SEC. 11. There are authorized to be appropriated such  
12       sums as may be necessary to carry out the provisions of this  
13       Act, including, but not limited to, the appointment of a sta-  
14       tistical agent or agents, and the organization of an assigned  
15       claims bureau and assigned claim plan in each State.

16           **SEPARABILITY CLAUSE**

17       SEC. 12. If any provision of this Act is declared uncon-  
18       stitutional, or the applicability thereof to any person or cir-  
19       cumstance is being held invalid, the constitutionality of the  
20       remainder of the Act and the applicability thereof to other  
21       persons and circumstances shall not be affected thereby.

22           **EFFECTIVE DATE**

23       SEC. 13. This Act shall become effective one year after  
24       the date of enactment.

92D CONGRESS  
1ST SESSION

# S. 946

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 17), 1971

Mr. HART (for himself and Mr. MAGNUSON) introduced the following bill;  
which was read twice and referred to the Committee on Commerce

## A BILL

To promote the greater availability of motor vehicle insurance  
in interstate commerce under more efficient and beneficial  
marketing conditions.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Motor Vehicle Group  
4 Insurance Act".

### 5 DEFINITIONS

6 SEC. 2. As used in this Act—

7 (1) The term "insurer" means any enterprise engaged  
8 in the business of issuing or reinsuring motor vehicle insur-  
9 ance policies in interstate commerce or engaged in the busi-

II

U.C. BERKELEY LIBRARY

## 2

1   ness of issuing motor vehicle insurance that is reinsured (in  
2   whole or in part) in interstate commerce.

3       (2) The term "group insurance" means any plan of  
4   motor vehicle insurance offered or provided to members of  
5   a group not organized solely for the purpose of obtaining  
6   insurance, under the terms of a master policy or operating  
7   agreement between an insurer and the group sponsor, and  
8   incorporating group average rating, guaranteed issue with  
9   or without minimum eligibility requirements, group experi-  
10   ence rating, employer contributions, or any other benefit to  
11   the members as insureds that they may be unable to obtain  
12   in the ordinary channels of insurance marketing on an in-  
13   dividual basis. The term "group sponsor" means the em-  
14   ployer or other representative entity of an employment-  
15   based group or the administrative representative of any other  
16   type of group.

17       (3) The term "interstate commerce" means trade or  
18   commerce among the several States, or between the District  
19   of Columbia or any possession of the United States and any  
20   State or other possession, or within the District of Columbia.

21       (4) The term "State" means any State or possession of  
22   the United States, the District of Columbia, and the Com-  
23   monwealth of Puerto Rico.

24       (5) The term "Attorney General" means the Attorney  
25   General of the United States.

**REMOVING RESTRICTIONS ON GROUP INSURANCE****SEC. 3. (a) No state shall—**

(1) prohibit, inhibit, restrict, or condition, by means of fictitious group statutes or regulations, agency licensing requirements, application of prohibitions of unfair discrimination, eligibility provisions, or otherwise, the issuance and marketing of group insurance; or

(2) penalize or deny authority to an insurer because of its engagement or intention to engage in the marketing and issuance of group insurance.

(b) No State or group of insurers operating voluntarily shall, directly or indirectly, include insureds under a plan of group insurance in the base used in determining assignments to or assessments upon an insurer under an assigned risk plan if such plan of group insurance precludes any individual underwriting by the insurer and if the group is not defined to exclude members characterized as being bad risks, unless the assigned risk plan provides a reasonable system of credit to the insurer for insureds under the group insurance plan who would otherwise be eligible for coverage under the assigned risk plan.

**ENFORCEMENT**

**SEC. 4. (a)** Whenever it shall appear to the Attorney General that any person is engaged or is about to engage in any acts or practices that constitute or will constitute a viola-

U.C. BERKELEY LIBRARY

## 4

1 tion of the provisions of this Act, he shall bring an action in  
2 the proper district court of the United States to enjoin such  
3 acts or practices, and upon a proper showing, a permanent or  
4 temporary injunction or restraining order shall be granted.

5 (b) Nothing in this section shall preclude an insurer or  
6 any other person from instituting legal process to enforce  
7 their rights under this Act or from using the provisions of  
8 this Act as an otherwise valid defense in any relevant legal  
9 action brought against them.

10

## JURISDICTION

11 SEC. 5. The district courts of the United States shall have  
12 exclusive jurisdiction of violations of this Act and of all suits  
13 brought to enforce it.

92d CONGRESS  
1st Session

# S. 976

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 25 (legislative day, FEBRUARY 17), 1971

Mr. HART (for himself, Mr. HARTKE, Mr. MAGNUSON, Mr. MUSKIE, Mr. PROX-  
MIRE, and Mr. RIBICOFF) introduced the following bill; which was read  
twice and referred to the Committee on Commerce

## A BILL

To amend the National Traffic and Motor Vehicle Safety Act of  
1966 in order to promote competition among motor vehicle  
manufacturers in the design and production of safe motor  
vehicles having greater resistance to damage, and for other  
purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Motor Vehicle Informa-  
4 tion and Cost Savings Act".

### PURPOSE

6 SEC. 2. (a) It is the purpose of this Act, (1) to amend  
7 the National Traffic and Motor Vehicle Safety Act of 1966  
8 (hereinafter referred to as "the Act") in order to establish

VII—O

★(Star Print)

U.C. BERKELEY LIBRARY

1 procedures for setting minimum property loss reduction stand-  
2 ards and to promote competition among motor vehicle manu-  
3 facturers in the design, production, and sale of motor vehicles  
4 which are less susceptible to damage in traffic accidents  
5 occurring at normal operating speeds and which lessen the  
6 risk of injury and death to occupants of motor vehicles and  
7 pedestrians involved in traffic accidents, and (2) to provide  
8 for the augmentation and implementation of certain Federal  
9 motor vehicle and highway safety standards.

10 (b) The first section of the Act (15 U.S.C. 1381) is  
11 amended to read as follows: "That the Congress finds and  
12 declares that—

13 " (1) it is necessary to establish motor vehicle safety  
14 standards for motor vehicles and equipment moving in  
15 interstate commerce, to establish testing procedures for  
16 passenger motor vehicles, to establish property loss re-  
17 duction standards, to undertake and support necessary  
18 safety research and development, and to expand the na-  
19 tional driver register; and

20 " (2) it is the purpose of this Act to reduce the  
21 number and severity of traffic accidents, the number of  
22 deaths and injuries resulting from such accidents, and  
23 the extent of property damage and economic losses re-  
24 sulting from such accidents."

## DEFINITIONS

SBC. 3. Section 102 of the Act (15 U.S.C. 1391) is amended by—

(1) inserting in paragraph (1) after “injury to persons” the following: “and unnecessary damage to motor vehicles”;

(2) adding at the end thereof the following new paragraphs:

“(14) ‘Property loss reduction’ means the reduction of economic loss suffered by the public as a result of property damage to motor vehicles involved in accidents.

“(15) ‘Property loss reduction standards’ means a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle property loss reduction and which provides objective criteria.

“(16) ‘Make’, when used in describing a motor vehicle, means the manufacturer’s trade name or other designation for a particular line of motor vehicles.

“(17) ‘Model’ means a particular size and style of body of any make of motor vehicle, including distinctive sizes of sedans, convertibles, station wagons, and trucks, and such other classifications as the Secretary may prescribe.

“(18) ‘Passenger motor vehicle’ means any motor

1 vehicle manufactured primarily for the transportation of its  
2 operator and passengers upon the public streets, roads, and  
3 highways.”

4 **PROPERTY LOSS REDUCTION STANDARDS**

5 **SEC. 4.** Title I of the Act (15 U.S.C. 1391 et seq.) is  
6 amended by adding at the end thereof the following new  
7 sections:

8 (a) the words “or property loss reduction” after  
9 the words “motor vehicle safety” wherever they occur  
10 following section 102;

11 (b) the words “or property loss reduction stand-  
12 ards” after the words “motor vehicle safety standards”  
13 or “safety standard” wherever they occur following  
14 section 102 (except section 103 (h) ) ; and

15 (c) the words “or property loss reduction stand-  
16 ards” after the words “motor vehicle safety standard”  
17 wherever they occur following section 102 (except  
18 section 103 (g) ) .

19 **PUBLIC DISCLOSURE OF COMPARATIVE SAFETY AND SUS-**  
20 **CEPTIBILITY TO DAMAGE OF PARTICULAR MOTOR**  
21 **VEHICLES AND ADDITIONAL STANDARDS**

22 **SEC. 5.** Title I of the Act (15 U.S.C. 1391 et seq.) is  
23 amended by adding at the end thereof the following new  
24 sections:

25 “SEC. 125. (a) The Secretary shall develop and pre-

1 scribe by regulations issued not later than July 1, 1972, a  
2 system of tests and testing procedures designed to allow a  
3 determination and comparison of the susceptibility to dam-  
4 age of passenger motor vehicles involved in traffic accidents  
5 which reasonably may be anticipated to occur at normal  
6 speeds and under normal operating conditions, including,  
7 but not limited to, collisions at speeds of five, ten, and  
8 fifteen miles per hour.

9       “(b) The Secretary shall, as soon as possible, after  
10 July 1, 1972, promulgate property loss reduction standards  
11 which will minimize economic losses associated with motor  
12 vehicle accidents. These standards shall be compatible with  
13 safety standards issued to protect motor vehicle occupants.

14       “(c) The Secretary shall, as soon as practicable, after  
15 July 1, 1972, promulgate a property loss reduction standard  
16 which requires that all motor vehicles manufactured after  
17 January 1, 1975, and offered for sale in the United States,  
18 are so designed and constructed with energy absorbing  
19 bumpers capable of withstanding impacts front and rear of  
20 5 miles per hour into a solid, fixed barrier (as prescribed  
21 by the Society of Automotive Engineers Standard J850)  
22 and the vehicle shall withstand such impacts with a mini-  
23 mum prescribed amount of damage as may be determined  
24 by the Secretary.

25       “(d) (1) The Secretary shall undertake a study of the

## 6

1 feasibility of developing tests and testing procedures designed  
2 to allow a determination and comparison of the risk of per-  
3 sonal injury or death to occupants of passenger motor ve-  
4 hicles resulting from traffic accidents which reasonably may  
5 be anticipated to occur at normal speeds and under normal  
6 operating conditions. The Secretary shall report the results  
7 of such study, and his findings and recommendations, in-  
8 cluding any recommendations for additional legislation he  
9 deems necessary, to the President and the Congress by  
10 July 1, 1972.

11 “(2) If the Secretary finds that such tests are feasible  
12 he shall develop and prescribe by regulations issued as soon  
13 as may be practicable such a system of tests and testing  
14 procedures.

15 “SEC. 126. (a) Each manufacturer of motor vehicles  
16 shall test production models of every make and model of  
17 passenger motor vehicle manufactured or imported by him in  
18 accordance with the regulations promulgated by the Secre-  
19 tary under the provisions of section 125 of this title, and  
20 shall furnish the results of such testing, including such data  
21 as the Secretary deems necessary, to the Secretary.

22 “(b) No manufacturer shall sell, offer for sale, intro-  
23 duce or deliver for introduction in interstate commerce, or  
24 import into the United States—

25 “(1) any passenger motor vehicle manufactured on

1 or after January 1, 1973, unless production models of  
2 the make and model of such motor vehicle have been  
3 tested in accordance with the regulations promulgated  
4 by the Secretary under section 125 (a) of this Act; or

5 “(2) any passenger motor vehicle manufactured on  
6 or after a date one hundred and twenty days after the  
7 date on which regulations governing tests and testing  
8 procedures are promulgated by the Secretary under the  
9 provisions of section 125 (b) of this Act unless a pro-  
10 duction model of the make and model of such motor  
11 vehicle has been tested in accordance with such reg-  
12 ulations.

13 “SEC. 127. (a) The Secretary shall compile informa-  
14 tion submitted to him under testing programs carried out  
15 under the provisions of sections 125 and 126 of this Act,  
16 and furnish it to the public in a simple and readily under-  
17 standable form in order to facilitate comparison among the  
18 various makes and models of passenger motor vehicles with  
19 respect to the factors analyzed by such testing programs.  
20 The information shall include, but not be limited to a com-  
21 parative analysis of the cost of repairing motor vehicles  
22 under section 125(a) and if practicable under section  
23 125(d). The Secretary shall require that the results of such  
24 testing be made available to prospective purchasers of pas-

1 senger motor vehicles by the manufacturer of such motor  
2 vehicles prior to their sale.

3 “(b) The Secretary shall—

4 “(1) make such information available to insurance  
5 companies and business organizations engaged in the  
6 business of selling or underwriting motor vehicle insur-  
7 ance in interstate commerce, for use in determining  
8 premium rates for insurance covering property damages  
9 and personal injury related to the factors tested under  
10 the provisions of section 126 of this Act. Information  
11 furnished shall include, but not be limited to, identifica-  
12 tion of parts, components, systems, and subsystems  
13 damaged or displaced in the motor vehicles tested; and

14 “(2) report to the President and the Congress on  
15 February 1, 1973, on the extent to which the motor  
16 vehicle insurance industry is utilizing such information  
17 in the determination of insurance premium rates, to-  
18 gether with such additional findings and recommenda-  
19 tions, including recommendations for additional legis-  
20 lation, as he deems appropriate. The Secretary is au-  
21 thorized to conduct such studies and surveys as may be  
22 necessary to carry out the purposes of this Act.

23 “(3) The Secretary, not later than February 1,  
24 1974, shall establish procedures requiring the automo-  
25 bile dealers to provide insurance cost data to prospective

1 purchasers that would enable the prospective purchasers  
2 to compare the difference in costs for auto insurance on  
3 the various makes and models of passenger motor vehi-  
4 cles having different occupant injury severity or vehicle  
5 property damage characteristics.

6 "SEC. 128. The Secretary shall, as soon as practicable,  
7 promulgate Federal motor vehicle safety and property loss  
8 reduction standards which require that all motor vehicles  
9 manufactured after January 1, 1975, and offered for sale in  
10 the United States, are so designed and constructed as to  
11 facilitate motor vehicle inspection, and to facilitate the re-  
12 pairs necessary to meet the requirements of such inspection."

13 JUDICIAL REVIEW

14 SEC. 6. Section 105 (a) (1) of the Act (15 U.S.C.  
15 1394 (a) (1) ) is amended by inserting after the words "any  
16 order under section 103" the following: "or 128, or any  
17 regulation issued under section 125."

18 SAFETY RESEARCH

19 SEC. 7. Section 106 (a) of the Act (15 U.S.C.  
20 1395 (a) ) is amended by redesignating paragraphs (2)  
21 and (3) as paragraphs (3) and (4), respectively, and  
22 inserting immediately after paragraph (1), the following  
23 new paragraph:

24 "(2) collecting data from any source for the pur-

1 pose of determining the relationship between passenger  
2 motor vehicle performance and design characteristics and  
3 (A) property damage resulting from motor vehicle col-  
4 lisions; and (B) the occurrence of personal injury or  
5 death resulting from such accidents;"

6 COOPERATION WITH OTHER AGENCIES

7 SEC. 8. Section 107 of the Act (15 U.S.C. 1396) is  
8 amended by striking out the period at the end thereof, and  
9 inserting in lieu thereof a semicolon and the following:

10 "(3) tests and testing procedures established under  
11 section 125 and methods for inspecting and testing to  
12 determine compliance with such tests and testing  
13 procedures."

14 PROHIBITION AND EXCEPTIONS

15 SEC. 9. Section 108 (b) of the Act (15 U.S.C. 1397  
16 (b) ) is amended by—

17 (1) inserting in paragraphs (1), (3), and (5) of  
18 such section, immediately after the words "subsection  
19 (a)" wherever they appear in such paragraphs, a  
20 comma and the words "and section 126 (b),"; and

21 (2) amending paragraphs (2) and (3) of such  
22 section 108 to read as follows:

23 "(2) Paragraph (1) of subsection (a), and section  
24 126 (b) shall not apply to any person who establishes that  
25 he did not have reason to know in the exercise of due care

1 that such vehicle or item of motor vehicle equipment is not  
2 in conformity with applicable Federal motor vehicle safety  
3 standards or property loss reduction standard or, in the case  
4 of a passenger motor vehicle, is not of a make and model  
5 which has been tested in accordance with the requirements  
6 of section 126 (b) , or to any person who, prior to such first  
7 purchase, holds a certificate issued by the manufacturer or  
8 importer of such motor vehicle or motor vehicle equipment,  
9 to the effect that such vehicle or equipment conforms to all  
10 applicable Federal motor vehicle safety standards, and (in  
11 the case of a passenger motor vehicle) is of a make and  
12 model which has been tested in accordance with the require-  
13 ments of section 126 (b) , unless such person knows that  
14 such motor vehicle or motor vehicle equipment does not so  
15 conform or (in the case of a passenger motor vehicle) is not  
16 of a make or model which has been so tested.

17 “(3) A motor vehicle or item of motor vehicle equip-  
18 ment offered for importation in violation of paragraph (1)  
19 of subsection (a) , or section 126 (b) , shall be refused ad-  
20 mission into the United States under joint regulations issued  
21 by the Secretary of the Treasury and the Secretary; except  
22 that the Secretary of the Treasury and the Secretary may,  
23 by such regulations, authorize the importation of such ve-  
24 hicle or item of motor vehicle equipment into the United  
25 States upon such terms and conditions (including the fur-

U.C. BERKELEY LIBRARY

1 nishing of a bond) as may appear to them appropriate to  
2 insure that any such motor vehicle or item of motor vehicle  
3 equipment will be brought into conformity with any ap-  
4 plicable Federal motor vehicle safety or property loss re-  
5 duction standard prescribed under this title, brought into  
6 conformity with the requirements of section 126 (b), or will  
7 be exported or abandoned to the United States.”.

8

## PENALTIES

9 SEC. 10. Section 109 (a) of the Act (15 U.S.C.  
10 1398 (a)) is amended to read as follows:

11 “SEC. 109. (a) Whoever—

12 “(1) violates any provision of—

13 “(A) section 108 (relating to motor vehicle  
14 safety standards or property loss reduction  
15 standards) ;

16 “(B) subsection (c) or (d) of section 112  
17 (relating to keeping records and reporting data) ;

18 “(C) section 114 (relating to certification) ; or

19 “(D) section 126 (relating to passenger motor  
20 vehicle testing) ; or

21 “(2) refuses to permit an inspection authorized  
22 under section 112 (a) and (b) shall be subject to a  
23 civil penalty of not to exceed \$5,000 for each such  
24 violation or refusal. A violation of a provision of such

1 sections or regulations issued thereunder, shall consti-  
2 tute a separate violation with respect to each motor  
3 vehicle sold, offered for sale, introduced or delivered for  
4 introduction in interstate commerce, or imported into  
5 the United States in violation of such provisions or  
6 regulations, and with respect to each failure or refusal  
7 to allow or perform an act required thereby. A refusal  
8 to allow an inspection authorized under section 112 (a)  
9 and (b), or a refusal or failure to allow or perform an  
10 act required thereby, shall constitute a separate viola-  
11 tion with respect to each day such refusal or failure  
12 continues.”

13 **INJUNCTIVE RELIEF**

14 **SEC. 11.** Section 110(a) of the Act (15 U.S.C.  
15 1399(a)) is amended by inserting in the first sentence  
16 thereof, immediately after the words “standards prescribed  
17 pursuant to this title”, a comma and the following: “or to  
18 the requirements of section 126(b)”.

19 **REPURCHASE OR REPLACEMENT**

20 **SEC. 12.** Section 111(a) of the Act (15 U.S.C.  
21 1400(a)) is amended by inserting immediately after the  
22 words “applicable Federal motor vehicle safety standards”  
23 or property loss reduction standards the following: “or the  
24 requirements of section 126(b)”.

## 14

## 1 INSPECTION OF MANUFACTURING FACILITIES

2 SEC. 13. Section 112(b) of the Act (15 U.S.C.  
3 1401(b)) is amended by inserting, immediately after the  
4 words "or are held for sale after such introduction", a  
5 comma and the following: "or are held after being tested  
6 in accordance with the requirements of section 126(b)".

## 7 CERTIFICATION OF CONFORMITY

8 SEC. 14. Section 114 of the Act (15 U.S.C. 1403) is  
9 amended by inserting before the period at the end of the  
10 first sentence a comma and the following: "and that the  
11 particular make and model of such motor vehicle has  
12 been tested in accordance with the requirements of section  
13 126(a)".

## 14 TITLE V

## 15 DIAGNOSTIC INSPECTIONS, REGISTRATIONS AND TITLING

## 16 STANDARDS

17 SEC. 501. (a) The Secretary of Transportation shall,  
18 not later than January 1, 1973, amend highway safety pro-  
19 gram standard number 1, relating to periodic motor vehicle  
20 inspection, issued June 27, 1967, under the provisions of  
21 section 402(a) of title 23, United States Code, to include  
22 the following additional provisions:

23 (1) The standard shall require inspection of a motor  
24 vehicle whenever the title to the motor vehicle is transferred  
25 for purposes other than resale, and whenever the motor

1 vehicle sustains damage if any safety-related mechanism,  
2 subsystem, or functional nonoperational part, as defined by  
3 the Secretary, is damaged.

4 (2) The standard shall require that a certificate of  
5 safe operating condition shall be delivered by the seller of a  
6 motor vehicle to the purchaser at the time of sale. The cer-  
7 tificate shall be prepared and signed by an inspector trained  
8 to perform this duty. The inspector shall be certified by the  
9 State in accordance with provisions established by the Sec-  
10 retary. No motor vehicle inspector may be certified by any  
11 State if he owns or receives any benefit in or from a busi-  
12 ness or enterprise engaged in the repair or sale of motor  
13 vehicles, automotive repair parts or accessories: *Provided,*  
14 That upon approval of the Secretary, a State may certify a  
15 motor vehicle inspector receiving such benefit where the  
16 vehicle population to be served is insufficient to make inde-  
17 pendent motor vehicle inspectors feasible and such State  
18 makes provision for protecting the public from any conflict  
19 of interest resulting from such certification.

20 (3) The standard shall be expressed in terms of motor  
21 vehicle safety performance applicable to new or used motor  
22 vehicles.

23 (b) The Secretary shall, not later than January 1,  
24 1973, amend highway safety program standard numbered 2,  
25 relating to motor vehicle registration, issued on June 27,

1 1967, under the provisions of section 402 (a) of title 23,  
2 United States Code, to include requirements for a State motor  
3 vehicle registration and uniform certificate of title program  
4 similar to the registration and title program contemplated by  
5 the Uniform Motor Vehicle Code and Model Traffic Ordinance,  
6 chapter 3, "Certificates of Title and Registration of  
7 Vehicles" revised 1968 and published by the National Committee  
8 on Uniform Traffic Laws and Ordinances, Washington,  
9 District of Columbia.

10 **REPORTS ON IMPLEMENTATION**

11 **SEC. 502. (a)** The Secretary shall report to the President  
12 and Congress by January 1, 1972, the extent to which  
13 the States have implemented programs in accordance with the  
14 provisions of highway safety program standards numbered 1  
15 and 2, relating to periodic motor vehicle inspection and motor  
16 vehicle registration, respectively, as issued on June 27, 1967,  
17 and make legislative recommendations for Federal financial  
18 and other assistance, as he deems necessary in order to facilitate  
19 compliance by the States by January 1, 1973.

20 **(b)** The Secretary shall provide for the States financial  
21 incentive programs for establishing the inspection and titling  
22 standards of this title. Each State certified by the Secretary  
23 as being in compliance with the provisions of this title shall,  
24 after January 1, 1973, receive not less than 10 per centum  
25 nor more than 50 per centum of the annual costs of such pro-

1 grams, the percentage to be determined by the Secretary  
2 based on degree of compliance. The funds for these incentive  
3 programs shall be paid from the Federal Aid Highway Trust  
4 Funds apportioned on or after January 1, 1973.

5 (c) The Secretary shall report to the President and  
6 Congress by January 1, 1974, the extent to which the  
7 States have implemented programs in accordance with the  
8 provisions of section 501 of this Act, and make legislative  
9 recommendations, for Federal financial and other assistance,  
10 as he deems necessary to facilitate complete compliance by  
11 the States not later than January 1, 1975.

12 (d) Not later than July 1, 1973 the Secretary shall—

13 (1) certify each State program of motor vehicle  
14 inspection and motor vehicle registration which meets  
15 the requirements of the applicable standard;

16 (2) the Secretary shall not approve any State high-  
17 way safety program under this section which does not  
18 establish motor vehicle inspection or motor vehicle  
19 registration programs meeting the requirements of  
20 section 501 of this title and the appropriate Federal  
21 highway safety program standard; and

22 (3) funds authorized to be appropriated to carry  
23 out the provisions of section 501 and this section shall  
24 be used to aid the States to conduct the highway safety  
25 program approved in accordance with subsection (a),

1 (b), and (c) hereof. Federal aid highway funds ap-  
2 portioned on or after January 1, 1975, to any State  
3 which is not implementing a highway safety program  
4 approved by the Secretary in accordance with this sec-  
5 tion shall be reduced for the first year of noncompliance  
6 by amounts equal to 10 per centum of the amounts  
7 which would otherwise be apportioned to such State  
8 under section 104 of title 23, United States Code, with  
9 the reduction of an additional 10 per centum for each  
10 succeeding year of noncompliance, but not in excess  
11 of a total of 50 per centum, until such time as the  
12 State is implementing an approved highway safety  
13 program certified by the Secretary in accordance with  
14 this subparagraph (d). Any amount which is with-  
15 held from apportionment to any State hereunder shall  
16 be reapportioned to the other States.

17 (e) In order to carry out the provisions of this sec-  
18 tion, the Secretary may—

19 (A) assist, by contract, grant, or any other arrange-  
20 ment, any State in establishing or improving programs  
21 of periodic motor vehicle inspection and motor vehicle  
22 registration;

23 (B) use the personnel, facilities, and information  
24 of Federal agencies, and of State and local public

1 agencies, with the consent of such agencies, with or  
2 without reimbursement for such use;

3 (C) enter into contracts or other arrangements and  
4 modifications thereof, and make advance, progress, and  
5 other necessary payments;

6 (D) obtain the services of experts and consultants  
7 in accordance with the provisions of section 3109 of  
8 title 5, United States Code;

9 (E) issue, amend, and repeal such rules and regu-  
10 lations as may be necessary; and

11 (F) take such other appropriate action as may be  
12 necessary.

13 SEC. 503. There are authorized to be appropriated to  
14 the Department of Transportation such sums as may be  
15 necessary to carry out the provisions of this Act.

92<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. CON. RES. 23

---

IN THE SENATE OF THE UNITED STATES

APRIL 29, 1971

Mr. MAGNUSON (by request) submitted the following concurrent resolution;  
which was referred to the Committee on Commerce

---

## CONCURRENT RESOLUTION

To express the sense of Congress with regard to the importance of adoption by the States of no-fault automobile insurance and accident compensation systems; providing guiding principles referable to such compensation systems; and requesting that the Secretary of Transportation assist and interact with the States with respect to the adoption of such no-fault automobile insurance and accident compensation systems, thereafter reporting results to Congress.

Whereas the existing system for compensating motor accident victims results in the unavailability of any benefits to many persons sustaining loss arising out of motor vehicle accidents, including many seriously injured persons and the dependents of many persons killed in such accidents; and

V

Whereas the existing system's uneven allocation of compensation benefits results in the excessive compensation of many persons sustaining only minor loss, and whereas by contrast many persons with severe and permanently crippling injuries recover only a fraction of their losses in compensation benefits from the system; and

Whereas administration of the system consumes an inordinate amount of resources which might be put to better use in compensating accident victims; and

Whereas the system's benefits tend to be ill timed and unresponsive to victims' needs both because of long delays in payment and because benefits are predominantly in the form of lump-sum payments, and whereas effective rehabilitation of the accident victim tends to be a practical impossibility under the system; and

Whereas the system is supported by, and dependent upon, compulsory insurance or financial responsibility laws which exert varying degrees of compulsion upon motorists to purchase liability insurance without invariably assuring motorists of the availability of automobile insurance; and

Whereas the counterproductive regulatory pressures placed by the system on insurers has led to the development of socially undesirable competition in risk selection accompanied by arbitrary and capricious declinations of insurance, cancellations, and refusals of renewal with the consequent growth of a high-risk automobile insurance market serviced in some cases by insurers of questionable financial stability; and

Whereas the system has imposed intolerable burdens on State officials responsible for regulating the rating, underwriting, and claims practices of insurers and responding to consumer complaints relating thereto; and

Whereas the system has placed an unreasonable workload on the Federal and State courts which have been forced to devote a disproportionate part of their time and resources to motor vehicle accident civil litigation; and

Whereas the system has resulted in the denial of substantial and equal justice to seriously injured accident victims who are unable to withstand the financial burdens consequent upon long court delays and who are, therefore, forced into inadequate settlements of their claims; and

Whereas the existing liability insurance system renders it impossible rationally to allocate insurance premium costs so as to reflect the ability of a motor vehicle to protect its occupants from serious injury in the event of a crash or to reflect differing costs of repairing motor vehicles; and

Whereas, however, prompted by the Automobile Insurance and Accident Insurance Study mandated by Congress, the hearings of congressional committees and the various hearings and studies conducted by many State legislatures, it is now almost universally conceded that there is an imperative need for prompt and far-reaching reform; and

Whereas one State, the Commonwealth of Massachusetts, has taken the lead by enacting the first partial no-fault plan in the country and many of the State legislatures are even now considering far-reaching reforms suited to the needs of their constituencies; and

Whereas the principal problems and abuses with respect to automobile insurance clearly stem from defects in the system for compensating accident victims and from the compulsions upon motorists to obtain the insurance which sustains and upholds that system rather than from defects in the insur-

ance institution or in its regulation by the several States;  
and

Whereas assumption of the present comprehensive State regulatory authority over automobile insurance by the Federal Government would be fraught with great and grave consequences giving rise to issues and problems of great magnitude, and is highly undesirable; and

Whereas mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform; and

Whereas one State, Massachusetts, has taken an important step toward the principles endorsed herein, and others promise to do so soon so that variants of the plan we endorse will, in the laboratory of the several States, soon be proved and perfected by experience: Now, therefore, be it

1       *Resolved by the Senate (the House of Representatives*  
2       *concurring)*, That it is the sense of the Congress that the  
3       regulation of insurance should, in general, continue with the  
4       States, subject to the admonition, however, that Congress  
5       cannot, and will not, long ignore the need for evolving new  
6       and updated approaches to insurance and accident compensation.  
7       sation.

8       That it is the further sense of the Congress that there  
9       must evolve at the State level a rational, equitable, and compatible  
10      reparation system for motor vehicle accident victims  
11      supported and sustained by a similarly rational, equitable, and  
12      compatible private insurance system, such combined system  
13      to be built upon the following principles:

1       1. Basic benefits should be forthcoming to the injured  
2 person on a first-party, contractual basis to the end that  
3 such person would be receiving benefits from the insurer with  
4 whom he has contracted and to whom he has paid his pre-  
5 miums and to the further end that competition among insurers  
6 would take the form of competition to provide prompter and  
7 more effective compensation for the premium payer.

8       2. Basic benefits under the reparations system should be  
9 payable to all accident victims without regard to fault, ex-  
10 cluding, of course, those who willfully injure themselves.

11       3. Such benefits should provide compensation for all eco-  
12 nomic loss, subject to reasonable deductibles and limits, and  
13 the tort lawsuit should be eliminated, at least pro tanto, avoid-  
14 ing the adversary process for the mass of accidents.

15       4. The function of the reparations system should be to  
16 afford adequate, but not excessive, compensation to the acci-  
17 dent victim at minimum cost. Therefore, the benefits obtain-  
18 able by the accident victim from other benefit sources should  
19 be coordinated and meshed with those obtainable from the  
20 automobile accident reparations system with a view toward  
21 internalizing automobile accident loss costs by making auto-  
22 mobile insurance the primary benefit source whenever  
23 feasible.

24       5. Maximum choice should be afforded the motorist in  
25 selecting his insurance source provided the coverage complies

1 with the principles for the required minimum mandatory  
2 coverage.

3 6. Rehabilitation, avocational as well as vocational,  
4 should be a primary function and objective of the compensa-  
5 tion system.

6 That it is the further sense of the Congress that the  
7 Secretary of Transportation be authorized and directed to  
8 request that the Council of State Governments, using the  
9 appropriate instrumentalities, develop model legislation for  
10 submission to the States for their consideration. The Secre-  
11 tary is further authorized and directed to analyze the ac-  
12 tions of the States, their legislatures and insurance regulatory  
13 officials, to determine to what extent such States act here-  
14 after to bring about motor vehicle insurance and accident  
15 compensation systems consistent with the intent of this  
16 resolution; to provide technical assistance to and interact  
17 with such States, their legislatures and insurance regulatory  
18 officials, in effecting in all the States compensation systems  
19 consistent with such principles, and to report such progress  
20 as has been made, or is being made, in effecting such com-  
21 pensation systems, with a final report to be made by the  
22 Secretary not later than twenty-five months hereafter de-  
23 tailing the action taken by each State in moving toward or  
24 providing an automobile accident compensation system con-  
25 sistent with these principles; the experience of the States

1 with these systems; and concluding with the Secretary's  
2 views regarding the feasibility of attaining a satisfactory and  
3 compatible motor vehicle accident reparations system with-  
4 out further Federal legislation.

THE GENERAL COUNSEL OF THE TREASURY,  
Washington, D.C., July 21, 1971.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 945, "Uniform Motor Vehicle Insurance Act."

The bill would provide a comprehensive system of "no fault" motor vehicle insurance to be applied throughout the country. Operation of a motor vehicle upon the public streets, roads, or highways of any state would be prohibited unless such vehicle was insured under a policy meeting the requirements set forth in the act. Tort liability would be provided for only in cases of catastrophic harm.

The Administration has proposed S. Con. Res. 23. Under the circumstances, the Department would recommend favorable action on S. Con. Res. 23 in lieu of action on S. 945.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

SAMUEL R. PIERCE, Jr.,  
General Counsel.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
Washington, D.C., September 1, 1971.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department concerning S. 945, a bill "to regulate interstate commerce and to provide for the general welfare by requiring certain insurance as a condition precedent to using the public streets, roads, and highways in order to have an efficient system of motor vehicle insurance which will be uniform among the States, which will guarantee the continued availability of such insurance, and the presentation of meaningful price information, and which will provide sufficient, fair, and prompt payment for rehabilitation and losses due to injury and death arising out of the operation and use of motor vehicles within the channels of interstate commerce, and otherwise affecting such commerce,"

to be cited as the "Uniform Motor Vehicle Insurance Act."

This bill would prohibit the registration or operation of any motor vehicle not covered by an insurance policy providing for payment of economic loss benefits, without regard to fault, with provision for optional catastrophic coverage. Applications for such policies could not be rejected by an insurer nor could they be cancelled without cause. The Secretary of Transportation would be required to promulgate a common, uniform statistical plan for the allocation and compilation of loss experience data. In addition, the Secretary would be required to organize an assigned claims bureau and assigned claims plan in each State in which all insurers would be required to participate.

We note that your committee recently drafted another no-fault insurance proposal, Committee Print No. 1, which differs from S. 945 in several respects: (1) it eliminates all tort liability for owners, operators or users of insured motor vehicles (except in cases of criminal conduct); and (2) it requires no-fault insurance policies to provide unlimited benefits, to cover property damage losses and to offer optional coverage for motor vehicle property damage and for pain and suffering.

The Department of Commerce recommends against enactment of both S. 945 and Committee Print No. 1.

Instead, we favor the approach embodied in S. Con. Res. 23, which has the support of the Secretary of Transportation, based on an exhaustive study of automobile accident insurance undertaken in accordance with P.L. 90-313. S. Con. Res. 23 expresses the sense of the Congress that the States should, in general, continue to regulate automobile accident insurance subject to the Congressional admonition that new and updated approaches to insurance and accident compensation must be evolved.

U.C. BERKELEY LIBRARY

The sense of the Congress embodied in S. Con. Res. 23 includes no-fault coverage and provides principles for State legislation. The Secretary of Transportation would analyze action taken by the States; provide them with technical assistance; and report not later than twenty-five months after adoption of S. Con. Res. 23 on progress made by the States in carrying out the intent of Congress as well as on his views regarding the feasibility of attaining a satisfactory and compatible motor vehicle accident compensation system without further Federal legislation.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

WILLIAM N. LETAN,  
General Counsel.

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., March 29, 1971.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: By letter of March 8, 1971, you requested our comments on S. 976, 92d Congress, entitled: "A BILL To amend the National Traffic and Motor Vehicle Safety Act of 1966 in order to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes."

While we have no special information as to the advantages or disadvantages of this measure and, therefore, make no comments concerning its enactment, we recommended the addition of provisions for records retention and access to records for the purpose of audit. Paragraphs (A) and (C) of subsection 502 (e) authorize the Secretary of Transportation to enter into grants, contracts or any other arrangement, including such assistance to States, in order to carry out the provisions of section 502. Since there are no record provisions in section 502, we suggest the addition of subsections (f) and (g) as follows:

"(f) Each recipient of assistance under this section pursuant to grants, contracts or any other arrangement entered into under other than competitive bidding procedures shall keep such records as the Secretary of Transportation shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(g) The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants, contracts or any other arrangement entered under this section under other than competitive bidding procedures."

Under section 202 of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577, 82 Stat. 1101, the Comptroller General and heads of Federal agencies have access to records pertaining to grants-in-aid received by States. However, section 202 does not cover contracts or any other arrangement for financial assistance except grants to States.

The language in lines 1 through 3 of page 15 (section 501(a)(1)) is garbled and should be clarified. Section 14(a)(1) of S. 4331, 91st Congress, 2d session, which is otherwise identical to section 501(a)(1) of S. 976 reads as follows in place of the garbled language:

"vehicle sustains damage if any safety-related mechanism, subsystem, or functional nonoperational part, as defined by the Secretary, is damaged."

Sincerely yours,

BOB KELLER,  
Assistant Comptroller General of the United States.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., May 28, 1971.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 976, a bill "To amend the National Traffic and Motor Vehicle Safety Act of 1966 in order to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes."

The preliminary sections of the bill would broaden the declaration of purposes contained in the Act of 1966 and add new definitions. Substantive provisions direct the Secretary of Transportation to develop and prescribe regulations by July 1, 1972, establishing a system of tests and test procedures for determining susceptibility to damage of passenger cars in low speed collisions. Cars manufactured subsequent to January 1, 1973 would be required to be subjected to the tests by the manufacturers and no car which had not been so tested could be sold or delivered in interstate commerce. It would be required that the results of such testing be made available to prospective purchasers by the manufacturer.

The Secretary of Transportation would also be required to promulgate property loss reduction standards designed to minimize economic losses associated with automobile accidents and to promulgate a standard requiring energy absorbing bumpers in all cars manufactured after January 1, 1974.

The bill directs the Secretary of Transportation to conduct a feasibility study regarding the development of tests to determine anticipated injuries to occupants of motor vehicles in collisions and to report his findings and recommendations to the President and Congress by July 1, 1972. If tests are found feasible, the Secretary would be required to implement the testing by prescribing regulations.

The Secretary of Transportation would be required to make available to the public and disseminate to insurance companies information submitted to him from the testing programs and report to the President and Congress the extent to which such information is utilized in determining insurance rates. By February 1, 1975, car dealers would be required to provide comparative cost data on auto insurance to prospective purchasers of vehicles with different occupant injury severity or property damage characteristics.

In addition the bill would strengthen and implement vehicle inspection standards and establish a nationwide uniform titling system.

Under the terms of the bill, the Secretary of Transportation would report to the President and Congress by January 1, 1974, on the extent to which the States have implemented programs in accordance with those provisions of the bill concerned with inspection and registration standards. Financial incentive programs would be provided for the States for establishing the inspection and titling standards.

Whether this legislation should be enacted involves questions as to which the Department of Justice defers to the Department of Transportation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,  
Deputy Attorney General.

THE GENERAL COUNSEL OF THE TREASURY,  
Washington, D.C., August 4, 1971.

HON. WARREN G. MAGNUSON,  
Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 976, "To amend the National Traffic and Motor Vehicle Safety Act of 1966 in order to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance

to damage, and for other purposes", which may be cited as the "Motor Vehicle Information and Cost Savings Act."

This proposed bill authorizes the Secretary of Transportation :

1. To issue regulations, no later than July 1, 1972, on a system of test and testing procedures to determine the susceptibility to damage of passenger motor vehicles resulting from traffic accidents occurring at normal speeds and under normal conditions.

2. To determine, if tests can be designed to allow a determination and comparison of the risk of personal injury or death to occupants of passenger motor vehicles resulting from traffic accidents occurring at normal speeds and under normal operating conditions, and if such tests are feasible, to prescribe them.

3. To prescribe, after July 1, 1972, property loss reduction standards, which are compatible with safety standards issued to protect motor vehicle occupants.

4. To promulgate a property loss reduction standard which would require that all motor vehicles manufactured after January 1, 1975, be designed and constructed with energy absorbing bumpers capable of withstanding impacts front and rear of five miles per hour into a solid fixed barrier and all such motor vehicles be able to withstand such impacts with a minimum amount of damage.

5. To promulgate Federal motor vehicles safety and property loss reduction standards which require that vehicles be so designed and constructed so as to facilitate inspection and repairs.

After the two above-mentioned testing procedures covering passenger motor vehicles are prescribed and made effective by regulations, the bill would require manufacturers to test production models and furnish the results to the Secretary of Transportation, and would forbid the commercial importation of passenger motor vehicles whose manufacturers had not complied.

After the three standards had been promulgated and made effective, the bill would prohibit the commercial importation of any vehicles that did not conform to property loss reduction standards, or standards on bumper design and construction. Vehicles which did not meet design or construction standards intended to facilitate inspection or repair of motor vehicles would be prohibited under the provisions of the existing statute (15 U.S.C. 1397 (a) (1)).

We understand that the Department of Transportation has transmitted to the Congress a draft bill which has been introduced as S. 2357 and referred to your Committee. The Treasury Department recommends enactment of S. 2357 in lieu of further consideration of S. 976.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

ROY T. ENGLETT,  
*Acting General Counsel.*

The CHAIRMAN. Now, Senator Hart, you have some remarks I believe you would like to make.

### OPENING STATEMENT BY SENATOR HART

Senator HART. Mr. Chairman, the legislative proposals which the Chairman and I are cosponsoring we believe will create a less costly, more humane automobile compensation system.

The discussions that have preceded the hearings I think have made rather clear the broad outline. I will not repeat it. But it is important to remember that not alone are we talking about a turn to no-fault automobile insurance, but we propose legislation directed at the motor vehicles themselves and their operation. We believe this will reduce accident loss and effect a substantial consumer saving in addition to the saving that would be reenacted by the adoption of no-fault insurance.

Because the basic insurance protection we are proposing would be available to everyone injured in an automobile accident, all accident victims would be assured of recovery of most of their compensable economic loss. Because the protection is on a first-party basis and be-

cause tort liability exposure is limited, the efficiency of the benefit delivery system would be increased markedly.

And because these proposals authorize the setting of priority loss reduction standards, and because they call for inspection of motor vehicles presently operating on our Nation's roads and make provision for the design and construction of an automobile that is more susceptible to direct and prompt and intelligent inspection, there is renewed impetus for reducing the cost of automobile accidents and vehicle operating costs.

Now, there have been many comments on the bills, and, indeed, the House in the last few days concluded 7 or 8 days of hearings. There it was argued, among other things, that the Hart-Magnuson approach is heartless. In House hearings the American Trial Lawyers Association said:

A man is worth more than the cost of putting him back together. He is not simply a machine that must be repaired so that it can be returned to the assembly line. It is morally wrong to say that an innocent victim must suffer the tragedy of a severed leg, a gouged out eye, or years of intractable pain without some compensation for his disability, disfigurement, dismemberment, and loss of ability to enjoy life itself.

That is fine, but the system which the trial lawyers defend fails miserably even at meeting the costs of putting the accident victim back together. Fifty-five percent of those seriously injured or killed in auto accidents receive no benefits from the tort liability insurance system. Ten percent receive no benefits from any system. Under the present system I suggest we treat the broken machines better than we treat the broken people. As for disability and disfigurement, our proposal pays for all hospital and rehabilitation costs and wage replacement to a \$30,000 limit. Additionally, the proposal specifically preserves the right of an auto victim who has suffered catastrophic harm to sue for damages not covered by the bill.

Under the present system, those suffering economic loss of \$25,000 or more receive in tort recoveries only about one-third of their economic loss. Under our proposal, the seriously injured victim would be much better off than he is today.

I hope in these hearings witnesses will address themselves to the issues and avoid the labels. If we get that kind of testimony, maybe we can achieve some constructive reforms.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cook.

Senator COOK. Thank you, Mr. Chairman. I have no opening statement.

The CHAIRMAN. Senator Moss.

Senator MOSS. Thank you, Mr. Chairman.

I have no opening statement. I am anxious to get on with the hearings.

The CHAIRMAN. Our first witness is Congressman Córdova from Puerto Rico who will introduce the executive director of the administration for compensation of automobile accidents from Puerto Rico.

Now, the system I understand for the record has been in effect down there about a year, is that right, Congressman?

Mr. CORDOVA. Since January of last year.

The CHAIRMAN. So you have some experience you can tell us? We would be glad to have you introduce your executive director or make such statements as you wish.

**STATEMENT OF HON. JORGE L. CORDOVA, U.S. REPRESENTATIVE  
FROM PUERTO RICO**

Mr. CORDOVA. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, it is a pleasure and honor for me as the elected representative of the people of Puerto Rico here in Washington to present to you Mr. Frank W. Fournier sitting to my right who is the executive director of the Automobile Accident Compensation Administration of Puerto Rico, an agency which has been recently set up, to administer a limited no-fault compensation system.

Mr. Fournier is a graduate of the University of Puerto Rico, has distinguished himself as an executive in the private insurance field, and was accordingly chosen to head this agency which administers the new system which became operative a year ago January 1.

It is our hope that the experience in Puerto Rico, limited as it is, will nevertheless be of value to this committee in its study of the proposed legislation.

I am indeed in sympathy with no-fault compensation insurance. My experience as a lawyer and as a judge over 30 years has persuaded me of the importance of adopting the concept.

Indeed, as I was telling Mr. Fournier as we were walking over here today, my only regret is that our system in Puerto Rico must necessarily, due to practical considerations, be a limited no-fault compensation plan. I would wish to see it expanded on a broader plane, and I am confident it will be if it continues to be as successful as it apparently has been during its first 17 months of operation.

So, it is a pleasure for me to introduce to the committee Mr. Frank W. Fournier.

The CHAIRMAN. We will be glad to hear from you.

**STATEMENT OF FRANK W. FOURNIER, EXECUTIVE DIRECTOR,  
ADMINISTRATION FOR THE COMPENSATION OF AUTOMOBILE  
ACCIDENTS, SAN JUAN, P.R.**

Mr. FOURNIER. Mr. Chairman and members of the committee, my name is Frank Fournier. I am executive director of the Puerto Rico Accident Compensation Administration. This is a public corporation of the Commonwealth of Puerto Rico that has the responsibility of administering the no-fault social insurance which gives protection to traffic accident victims.

Puerto Rico adopted on June 26, 1968, the no-fault approach for the automobile accident compensation system, thereby becoming the first jurisdiction under the U.S. flag to meet the problem with this new concept.

In every part of the world the accident problem has constantly increased in its magnitude. The effect is so universally experienced and dissatisfaction with the present insurance system so widely voiced, that there is a growing need for reform.

It has become clear to consumers, insurers, and government officials, that the present system of auto liability insurance coverage is becoming unworkable.

Due to long litigation, victims must often wait years to receive compensation, plaintiff attorneys clamor for higher awards, the motorist bewails increasing premiums and the insurance counsel shuns reform. Meanwhile, the fact of proving who is at fault in an accident, with its costly legal tangles and complexities, is creating a crisis in the administration of justice thus exposing the basis of our democracy—the citizen's respect in the law.

The automobile accident victim may have to face years of financial, mental, and physical misery and sometimes is prompted to accept inadequate settlements.

On the other hand, the outcome of an automobile accident case under the fault system is unpredictable. As a result, the number of personal injury losses which remain uncompensated is exceedingly high.

In Puerto Rico, none out of 10 victims were not receiving any sort of compensation. There were two basic reasons for this situation: (1) Negligence gap. (2) Financial responsibility gap.

The first reason we have mentioned. There are several reasons for the second. The financial responsibility or solvency gap was mainly due to the fact that only 35 percent of the vehicles, prior to the enactment of the law, were carrying any sort of insurance. Of the automobile owners' premiums paid to private insurance companies, 57 percent of it was used to pay benefits to the victims. The 43 percent difference was for the costs of acquisition and administration in addition to the profit—not including any investment income.

To better understand this last reason, it is worthwhile mentioning that Puerto Rico for the last two decades has been experiencing a tremendous economic boom. Many jobs have been created and consumers have been able to purchase homes and cars.

The homes are usually located at a distance from the place of work. On the other hand, there is a lack of adequate mass transportation, thus making the car the best means. Having one car for each five persons places us in the sixth place, only after the United States, Canada, England, Australia, and France. Prior to the enactment of our no-fault, our rates were among the highest in the Nation, being the sixth highest premium in the market. It made it difficult for the consumer to afford protection. As a matter of fact, the per capita income of Puerto Rico is lower than the income level of the United States. Right now it is \$1,400.

Many alternatives were considered and rejected after analysis for being unfeasible or unsound, either to private enterprise or to the public. Proposals and acts covering all areas from financial responsibility laws, compulsory insurance and unsatisfied judgment funds to impounding laws, guaranty funds and assigned risk plans were proposed in some form or other, but they were neither acceptable to the parties concerned nor did they completely solve the problem.

Reform was inevitable and Puerto Rico's legislature took action in an imaginative and bold approach. The private sector failed to come with an alternative thus forcing the Government, in its great responsibility to protect their constituents, to come with a positive action to solve the problem—the Automobile Accident Social Protection Act.

Among the problems of the legislature in considering this legislation were those related to costs and financing of the proposal. As the

solvency is guaranteed by the general fund of the Government, actuarial reports that were based on experience and estimates were thoroughly revised. Nevertheless, the risk factor, as well as catastrophic consequences were raised by objectors of the system.

As mentioned, several efforts were made to enact patchwork solutions and financial responsibilities loss, unassigned risk plans, compulsory insurance, et cetera. However, when considering the present act, the change was more drastic and a complete reform from regular and known solutions was considered. The legislators were extremely conscious of this special situation.

The industry opposed the no-fault system as they had opposed workmen's compensation, as they opposed the Social Security Act, as they opposed large deductibles, and as they opposed group life insurance and multiple line insurance. Several persons pressed to adopt a wait-and-see attitude to have the benefit of other jurisdictions or national solutions. However, our situation was ripe for a reform since many victims were not receiving adequate compensation, or no compensation at all, and the premium rates were skyrocketing.

The CHAIRMAN. When you speak of the industry in Puerto Rico—this is just for the information of the record—are they mainly Puerto Rican insurance companies or are they branches of American companies or other companies?

Mr. FOURNIER. They are branches of American companies mostly. We do have two or three other companies.

The CHAIRMAN. Are those Puerto Rican divisions with local people handling the insurance?

Mr. FOURNIER. That is right. General agencies, the same structure as they work in the rest of the States.

The CHAIRMAN. So, down there it would be generally—I am just speaking generally—be safe to say that you were dealing with the same—when we talk of the industry—the same people that we would be dealing with here?

Mr. FOURNIER. Yes, sir. A sector recommended to wait until the Department of Transportation report was released in order to implement a solution.

This same group objected to the fact that the system did not provide compensation for all physical or mental suffering since there was a deductible which was originally recommended to be \$3,500. This figure was reduced to \$1,000 in an apparent effort to compromise.

The partial elimination of the negligence concept was also pointed out to be irritating and possibly damaging to the prevailing values.

At this time, I do not intend to give you details of the Social Protection Act, but to better understand its advantages, let us briefly review its main provisions.

The social protection insurance plan underway in Puerto Rico since January 1, 1970, is intended to avail to all persons using the island's roads a basic plan that provides immediate help to victims of motor vehicle accidents, regardless of the liability principle on the basis of negligence. The plan endeavors to curtail the problem of the victims' helplessness as a result of automobile accidents. Its essential purpose goes beyond the realms of legal resources and juridical analysis: While preserving a legal action against the person responsible for the accident and indemnity under the principle of liability on the basis of

negligence, as per limits fixed by the law, promotes a basic coverage for prompt and effective benefits to a victim, no matter who is at fault.

The social protection plan responds to a social insurance philosophy. It is compulsory and Government administered. It emphasizes socially adequate benefits rather than individual equity and aims at a basic plan of protection for all victims—whether drivers, passengers, or pedestrians—through benefits prescribed by statute. It does not require underwriting, policy issuance, billing, or special collection of premium. The premiums are collected at the time the license plate is renewed.

The CHAIRMAN. Let's clear that up for the record. That is interesting. When the car is a licensed car the owner pays a license fee?

Mr. FOURNIER. Yes, sir.

The CHAIRMAN. But there is added to that the premium for this insurance?

Mr. FOURNIER. Yes, sir.

The CHAIRMAN. Of course, here we would have the problem of 50 States having to collect the amount, but that is a very interesting matter.

Are cars licensed annually?

Mr. FOURNIER. Yes.

Benefits provided include medical and hospital care, compensation for beneficiaries of death victims and funeral expenses, dismemberment and disability. Coverage for medical payments are designed on a blanket unlimited basis.

Medical and hospital services are provided by independent practicing physicians and both private and public hospitals under contract with the agency. It is an approach similar to that used by Blue Shield and Blue Cross plans in the United States. In this way, the principle of freedom of choice of hospitals and the physician is preserved.

Wage loss for disability benefit is reimbursed to the victim on a co-insurance basis estimated taking as a base our income per capita. It discourages malingering; on the other hand, if losses are over the \$1,000 for pain and suffering and \$2,000 for other damages and there is negligence involved, the victim has the legal recourse against the party liable.

Dismemberment benefits run as high as \$5,000. There is a \$500 funeral benefit. Death benefits depend on the age, relationship, and dependency status of the survivors. These benefits might go up to \$15,000. There is no limit per person nor per accident.

The plan excludes property damage liability. The amount payable by the person liable is subject to reduction of any sum paid under the social protection plan or by the \$1,000-\$2,000 limits, whichever is greater.

The social protection plan is financed through payment of \$35 made simultaneously with annual registration of the vehicle.

The CHAIRMAN. In Puerto Rico the premium is \$35 per year?

Mr. FOURNIER. Yes, sir.

All natural persons are entitled to benefits, except for a few exclusions deemed necessary on behalf of the public interest.

These are:

(1) Those whose injuries were caused by an act or omission on their part performed for the purpose of causing damage to their own person.

(2) Those who at the time of the accident were driving a motor vehicle without being legally authorized to do so.

(3) Those who at the time of the accident were participating in automobile races or in speed tests, either as a driver, passenger, spectator, or as official or employee in areas reserved for such activities.

(4) Those whose injuries occurred while committing a criminal act other than a violation to the traffic law.

(5) Those who at the time of the occurrence of the accident were driving their automobiles in a state of drunkenness or under the effect of drugs.

Under this persons are excluded. In the event of death, their dependents will be protected by the law as well as the victims and their dependents.

The fund is controlled by a five-member board appointed by the Governor of Puerto Rico and confirmed by the Senate. One member of the board must be a Cabinet member; another member an expert in the insurance business, and at least two others should represent the public interest. An administration created by the same act, settles claims and carries on all other administrative functions.

To avoid duplication in paying for the social protection plan and private insurance, the insurance commissioner initiated a series of rate reductions to bodily injury and medical coverages when the plan went into effect on January 1, 1970. The reduction affecting bodily injury and medical payments amounted to approximately 30 percent on private passenger cars. But the special feature, as mentioned, of the plan mentioned before leaves the tortfeasor liable to judicial action if economic loss exceeds the limits exempted by the act with privately provided insurance complementing the basic social protection.

The CHAIRMAN. In that case without going into all the exceptions, if the accident occurred and a person was injured by a drunken driver, he would still get the benefits up to a certain amount under the social protection plan, but he could still go into court and haul that drunken driver in and ask for more; is this what you are saying?

Mr. FOURNIER. Yes, sir, exactly. Actually the victim will be protected at any time. The wrongdoer, if he is driving his car under the influence of alcohol, he won't be protected. However, if he dies in the accident, his wife and his kids will be fully protected by the system.

There is also the possibility of recovery in subrogation. The administration has the recovery possibility against a drunken driver and will recover the full amount that is paid to the victims.

The CHAIRMAN. One other thing—you may cover this later on—but a car owner pays the \$35. So, he is under the plan. He has to pay it to get a license.

Mr. FOURNIER. Yes, sir.

The CHAIRMAN. But supposing he thought the compensation plan was not enough, could he still go out and buy additional private insurance?

Mr. FOURNIER. That is right.

The CHAIRMAN. Go ahead.

Mr. FOURNIER. Going through the provisions of the act and complying with our interest in improving the present system, we have answers backed with experience to those who stoutly oppose the no-fault scheme and alleged that:

*1. It would take away vital rights from traffic accident victims*

On the contrary, the social protection plan provides benefits to all victims as a matter of right without regard to legal technicalities.

Promptly and when they are needed encouraging immediate medical care and rehabilitation.

Minimizes human suffering and financial loss.

It leaves the tortfeasor open to judicial action for the amounts in excess of the basic coverage. Therefore, it does not abolish the right of recovery in the courts and it does not completely eliminate the negligence system.

*2. It would shift the burden of responsibility in traffic accidents from the guilty to the innocent*

The Puerto Rican plan broadly spreads the cost of auto injuries over all automobile owners thus placing the economic burden where it belongs. By spreading the burden over all owners it falls lightly on each one rather than heavily on a few. It makes good and bad drivers pay for the cost of their automobile accidents. It transfers the cost of accidents from the victims to all owners. This represents a vast improvement over the present system. Like social security, the plan is designed to help victims of automobile injuries and not as punitive measure to punish bad drivers or the insurance companies, as the negligence system works.

There are more effective procedures for dealing with bad drivers. They can be subjected to penalties, fines, and even imprisonment if their driving violates the criminal law and their driving privileges can be suspended or revoked.

*3. It would saddle car owners who have families with a bigger share of the premium burden than they now bear*

This is a false premise. When the benefits are efficiently provided, it encourages prompt treatment and rehabilitation by utilizing the social insurance technique, eliminating wasteful practices of the present automobile liability insurance and negligence system. Thus costs will be lower, utilizing most of the premium for the benefit of the victim.

Your current system returns in benefits approximately 45 cents out of each premium dollar collected; the social protection plan is about twice as efficient in terms of utilization of premium dollars for the payment of benefits. It makes available returns in benefited of approximately 89 cents out of each premium dollar collected.

The CHAIRMAN. In other words, your experience to date has been that your administrative cost and other features have run about 11 percent of the total?

Mr. FOURNIER. Yes, sir. Taking the investment income into consideration, our expense ratio is close to 11 percent.

The CHAIRMAN. In any event, for every dollar you collect you pay out 89 cents?

Mr. FOURNIER. That is right. For the first year we have the organization expenses and other expenses that we won't be having for the rest of the operation.

So, we believe the figures will be coming down.

The CHAIRMAN. As you move along with experience, you expect to do even better?

Mr. FOURNIER. That is right.

*4. It would undermine traffic safety efforts*

The Social Protection Act dispositions do not stimulate traffic violations. A traffic victim will not qualify for any of the benefits—even though his dependents will be entitled to their corresponding benefits—if at the time of the accident, he was driving but an unlicensed driver was driving under the effects of alcohol or narcotics, or was committing a criminal offense not related to the traffic code or participating in auto races or speed tests. Self-inflicted injuries are also excluded from coverage.

Our experience is a vivid example that the plan does not create irresponsible driving habits, nor increases the number of automobile accidents. The law has specifically provided as a function of the administration, the obligation to investigate all the phases of the problem of automobile accidents including the phases of financial liability and of accident prevention and make the pertinent recommendations to the Governor and to the legislature.

The data collected reflects the true state of affairs of the occurrence with respect to automobile accidents since the wrongful act of the persons insured is not taken into consideration in setting the amount of compensation thus making available meaningful information for accident analysis programs.

Recent compiled statistics indicate that only 90 persons died from auto accidents in 1970, 20 percent less than the previous year, even though we had approximately 76,000 more cars than in 1969, a 25-percent increase.

*5. It eliminated private enterprise by providing State interference or making its existence almost impossible*

Willis T. Rokes while analyzing the effects of the Saskatchewan plan asserts that:

Many opponents of the AAIA believed that the act would drive the automobile insurance agent out of business. On the contrary, the number of agents increased due to the introduction of compulsory insurance in Saskatchewan. This is attributed to the fact that coverage made the public, insurance-conscious and created a greater demand.

In Puerto Rico the market is served by companies licensed in the island and also domestic companies. After the enactment of the plan, the companies have continued to provide insurance coverage over the basic no-fault limits established.

We do not foresee any elimination or curtailment of their existence or any incompatibility with the government plan. On the contrary, advanced reports on premiums written by them reflect increases which definitely disprove the allegation.

Between January 1, 1970, and March 31, 1971, 39,948 victims or their dependents received benefits under the law. Benefit payments of \$8,045,432 have already been paid or reserved.

Furthermore, many lives were saved by the immediate attention received in the nearest facility or hospital and total or longer disability was prevented as the emergency cases were rapidly and effectively taken care of by specialists; \$4,657,418 was reserved or paid to these victims.

Death benefits have been paid or reserved in the amount of \$2,497,230, and, as a result, many widows, children, parents, and other dependents of the victims are presently receiving the protection in weekly

payments amounting to \$50 or a lump sum for the purposes established by law.

As a byproduct of decentralized operations, through nine offices located throughout the island, the funeral expenses provided by law are disbursed within 48 hours after the accidents; \$310,230 was paid for this purpose.

Disability payments are also promptly calculated and disbursed to the injured persons promptly after the 15-day waiting period—\$809,683 was paid to those victims.

Dismemberment benefits, paid in addition to medical expenses and disability payments, are being paid to victims; \$81,100 has been respent for this purpose. The administration is also providing prosthetic devices, wheelchairs, and any other type of medical or rehabilitation equipment, whenever its use is medically recommended.

Statistical information on all accidents, including their socioeconomical impact, consequences, and motivations, are recorded and analyzed by a computerized system. An excellent example of the benefits of our analysis system is the decrease in pedestrian's accidents. During 1969, 45 percent of the victims were pedestrians. In February this percentage jumped to 61 percent. As a result of findings, the reasons for these accidents were analyzed. A pedestrian safety education campaign was started through all means of communication, resulting on the overall reduction in the percentage to 48 percent in March, to 36 percent in April, dropping to 34 percent in May. The overall percentage of pedestrian victims for the year ended in 1970 was 49 percent.

Total income from premiums charged to all vehicle owners amounted to \$21,988,036, operating expenses were \$2,647,340, thus having an expense ratio of 12.04 percent. This is without including the investment income.

Operating expenses included expenses of the nine district offices, and the central office with its seven departments which include medical social workers assigned to cover all the hospitals around the island.

Operation of the fund is on a nonprofit basis and all surpluses and reserves are held by the administration exclusively for the future benefit of motorists and accidents victims. The plan has been widely accepted by the citizens as a socially urgent program which has proved its feasibility in fulfilling the needs of the automobile accidents victims.

It is worthwhile mentioning that expense ratios for property and casualty stock companies were reported by A. M. Best Co. at 30.3 percent for 1969 and the mutuals expenses were 24.1 percent which compared to our 12 percent are extremely high.

The Government Employees Insurance Co. of Washington, D.C., had an expense ratio of only 12.4 percent.

Many jurisdictions are looking up our social protection plan even though differences of legal procedures, political attitudes and economic developments are present. The automobile insurance problems are not inherently different from those commonly found in the States.

Right now there are several improvements we have submitted to our legislature:

(a) Benefits for work loss to the housewife to cover in part for expenses reasonably incurred for service in lieu of hiring household help to do her work.

(b) Extending coverage for dismemberment benefits to other extremities.

(c) Provision for special procedures for the protection of minors as beneficiaries of the victim.

(d) Coordinating several provisions to prorate annual contribution according to certain requirements of the vehicle and transit law.

Puerto Rico has established that it is fully capable of making an orderly, efficient and complete transition from a fault system to a partial no-fault system, until now our experiences have gone beyond our expectations but from now on, our experiences might help our way into elaborating future expectations.

The Puerto Rican no-fault system should not be regarded as a solution designed to fit only a unique socioeconomic structure or situation. Although the plan was designed to fit Puerto Rican problems its basic philosophy may be readily adapted to any other situation including those existing in other jurisdictions of the United States. This is so, since the existing automobile insurance problems in Puerto Rico are not substantially different from those found in the mainland. Whatever differences do exist they have to deal primarily with the magnitude and not with the nature of the problem.

Which trend to follow?

If the no-fault plan is to be adopted by any jurisdiction its success depends mainly on the positive action of the government.

First, the problem should be faced recognizing the failure of the negligence system in solving the plight of the victims of automobile accidents. As the insurance companies claim, it produces serious underwriting losses.

In the second place, the American automobile insurance industry should be required to offer a satisfactory alternative based on a no-fault system which proves their intentions of working hand-in-hand with government in approaching and solving the present situation.

Right now there are close to 50 proposals, and there are a few of the major companies that are endorsing and even writing some policies without any amendment of the State laws.

A democratic society of which the insurance industries and State governments are the pillars of the compensation system, cannot be blind to its responsibilities. We cannot let the public lose faith in their institutions.

Third, if the automobile insurance industry fails to provide a plan that fulfills government expectations for a fair plan for motorists and persons who might be injured as a result of a motor vehicle accident, it is time for the adoption of a governmental no-fault social protection plan.

It is clear therefore, that whatever action is taken to meet the outcry of society for reform of the compensation system for automobile accident victims, it will have to be urgent, and if any alternative is selected, it will have to be a no-fault system.

Thank you.

The CHAIRMAN. Thank you for that excellent review of your experience with the system for the past year.

Now I have just a couple of questions. I was going to ask you; has no-fault led to more accidents because of irresponsible driving? But you covered that in your statement, but I would like to state again that

the accident rate has fallen since the no-fault plan has gone into effect. Those are the figures you have given us in your statement.

Mr. FOURNIER. Yes.

The CHAIRMAN. I think we cannot stress that too much, because one of the potent arguments against no-fault is that it would create irresponsible drivers. Of course, you have eliminated some of the irresponsible drivers, but I think I read somewhere, I will correct the record if I am incorrect, that at least from 40 to 50 percent of our accidents have been caused by drunken drivers.

Mr. Congressman, were Puerto Rican courts clogged down like they are here with auto cases?

Mr. CORDOVA. That is correct.

The CHAIRMAN. Has this plan helped that considerably?

Mr. CORDOVA. I could not answer that question. Our courts were clogged, yes, but not to the degree that they have been clogged in the States because we do not have jury trial in civil cases in Puerto Rico except in the U.S. District Court for Puerto Rico. That is the only court which has the jury trials. A trial before a judge is more expeditious.

The CHAIRMAN. Is it generally thought that the court congestion has been relieved?

Mr. FOURNIER. Yes. We have a 1-year expiration of court claims. We did make a survey of the major insurance companies doing business, and there was a reduction of approximately 10 percent, but we will be able to get exact figures within a year. Actually it will be 2 years; in 2 years we will have figures—

The CHAIRMAN. Because a lot of cases were pending?

Mr. FOURNIER. That is right.

The CHAIRMAN. Another factor, and I do not say this in any derogatory way—maybe it is good there are not as many lawyers in Puerto Rico per capita as there are around here.

Mr. CORDOVA. There may well be. I have never made the comparison. But there are a lot of us. I will supply the figures.

(The information follows:)

The number of lawyers, according to the Supreme Court is 3,813 for 2.7 million inhabitants or one lawyer for each 708 persons.

The CHAIRMAN. Senator Hart.

Senator HART. Gentlemen, thank you for the helpful testimony.

Thirty-five dollars annually is the premium. You say in the first year of your operation you have returned 89 cents of every dollar that you have collected.

Mr. FOURNIER. Let me clarify it. We did not return the full amount, but we do have the excesses and surpluses remaining to be returned to the victims, either as increasing the benefits or either by decreasing the premium. However, we have selected to increase the benefits rather than reduce the premium, because the system has some areas which do not have enough compensation or no compensation at all that we need to cover first before reducing the premium.

Senator HART. I understand that there would be no moneys retained for profit, it being a nonprofit Government activity, and you told us some of the costs were startup costs incurred this year which would not be repeated in the years ahead. But again 11 cents was retained I guess is what I am trying to find out?

Mr. FOURNIER. These are operating expenses.

Senator HART. Are you saying that not all of the 89 cents remaining was paid out in benefits, that some was retained in addition to the 11 cents?

Mr. FOURNIER. These are reserves. However, the moneys collected and the moneys paid, these have to be returned either in original benefits or as an adjustment to premiums paid by the owners.

Senator HART. Your testimony advises us that before this public compensation plan went into effect 57 percent of the premiums were returned to policyholders by the private insurance carriers.

Mr. FOURNIER. That is right.

Senator HART. That loss ratio is substantially higher than the 45 to 50 percent estimates that we get from the operations in this country. Do you know whether that 57-percent figure included benefits for lawyers, legal defense?

Mr. FOURNIER. Actually, I cannot tell for sure.

Senator HART. Mr. Chairman, if we might have that answer after you check for the record.

Mr. FOURNIER. Yes. To be completely truthful, we need to check on those figures. Offhand, without getting into the details, my thinking is, it was not considered. It went directly to the victims. However, to confirm that we will supply it.

Senator HART. We will receive the answer for the record.

(The following information was subsequently received for the record:)

The 57% loss ratio includes the payments for legal defense to plaintiffs' attorneys, however, defendants' (insurance companies) costs are included in the administration costs.

Senator HART. You have told us in addition to the insurance provided by the Puerto Rican auto accident compensation plan a person can buy private insurance to protect himself from tort liability over the set figures. Do you know what the total premium is now when you figure both the \$35 for the Government administration of the plan and by the private industry supplement for coverage?

Mr. FOURNIER. Well, we have to take into consideration the classification of the risk and also the limits of the policy. Let's take a person that uses a car to drive from home to work and for pleasure and has a 5-10 basic protection. In a private insurance company the premium paid will be close to \$97 per year. However, the private insurance company policy before did not protect the driver and other persons living in the same household. By having the \$35 Government premium they are protected. All the victims, including the passengers, the driver and the pedestrians, all the persons living in that household without limit per accident per person. We have had to pay close to \$50,000 in medical expenses in some cases. If we have five persons injured in an automobile accident we have to pay \$50,000 for each one of them. There is no limit in connection with the medical expenses. So the total protection is increased. At the same time more persons are protected than before having the private insurance company policy.

(The following information was subsequently received for the record:)

For correcting the example given in connection with the actual effects of savings to consumer after Law 138 was adopted, following is a schedule of classifica-

tions and rates. The closer classification is 1C<sup>1</sup> was paying \$98.00 per year for 5/10 bodily injury and 2,000 medical payments, after the Law was passed he paid \$68.00 for a \$30.00 savings. The same owner had to pay \$35 to Government No-Fault, however, as mentioned now the name insured as well as the persons living in the same household will be protected without limits per person in medical payments, nor per accident in the rest of the coverages.

RATES FOR BODILY INJURY WITH LIMITS 5/10 PLUS \$2,000 MEDICAL PAYMENTS FOR THE YEARS 1968 AND 1970  
BY CLASSIFICATIONS

Classification	1968			1970			
	B.I.	M.P.	Total	B.I.	M.P.	Total for private insurance	ACAA Total
Code 01:							
1A.....	\$68	\$16	\$84	\$50	\$9	\$59	\$35 \$94
1B.....	72	16	88	53	9	62	35 97
1C.....	81		98	59	9	68	35 103
2A.....	106		126	78	11	89	
2C.....	128	22	150	93	13	106	
3.....	80	17	97	62	10	72	
Codes 03, 04:							
1A.....	62	15	77	44	8	52	35 87
1B.....	62	15	77	44	8	52	35 87
1C.....	71	16	77	50	9	59	35 94
2A.....	95	19	144	68	10	78	
2C.....	125	22	147	89	12	101	
3.....	83	17	100	59	9	68	

Note: Classifications are the same used at the mainland.

RULE 4. PRIVATE PASSENGER AUTOMOBILE CLASSIFICATIONS

This Rule is replaced in its entirety by the following:

LIABILITY COVERAGES AND COLLISION ONLY

The provisions of this Rule apply separately to premiums for Liability and Collision Insurance.

(a) Private passenger automobiles owned by an individual or by husband and wife resident in the same household shall be classified as follows: (Refer to Section E of this Rule for the definitions of terms used in this section).

1A. There is no male operator under 25 years of age, the automobile is not used for business nor is it driven to or from work.<sup>1</sup>

1B. There is no male operator under 25 years of age, the automobile is not used for business but it is driven to or from work<sup>2</sup> a distance of less than ten road miles one way.

1C. There is no male operator under 25 years of age, the automobile is not used for business but it is driven to or from work<sup>2</sup> a distance of ten or more road miles one way.

2A. There are one or more male operators under 25 years of age and each such male operator is either (1) married or (2) not an owner or principal operator of the automobile.

2C. There is an unmarried male operator under 25 years of age who is an owner or principal operator of the automobile.

Copyright 1969, Insurance Rating Board.

Senator HARR. Now, to give us some measure of that, and I assume we would have to ask you to provide the figures for the record, can you let us know what the total premium dollars paid before the institution of the Puerto Rican plan were? In other words, what was the premium volume done by the private insurer before the plan and what is the total in the first year of the plan including private claims paid to supplement the plan? I would like to have those two figures.

<sup>1</sup> There is no male operator under 25 years of age, the automobile is not used for business but it is driven to or from work a distance of ten or more road miles one way.

<sup>2</sup> An automobile used for driving to or from school shall be considered as used for driving to or from work.

Mr. FOURNIER. The first is close to \$5 million that was returned from the private insurance companies to their policyholders.

Senator HART. No, what I think would be helpful to get is the premium volume, total insurance premium paid, not paid out but paid by the consumer to the companies for private insurance in the year prior to the institution of the Puerto Rican plan and now, the total purchased from private insurers plus the total of the \$35 per licensee under the State plan.

Mr. FOURNIER. Before, only 35 percent of the owners were having any sort of insurance. So the complete universe was not paying the premium. Right now the consumers pay close to \$19 million for the Government insurance, and I guess that for the last year the companies were required to submit figures as of March 31, and the complete report is not completed yet. However, it is close to \$12 million that the consumers pay to private insurance companies.

Senator HART. Then for the record you can give us the total premium dollar that was represented in the insurance purchased by the 35 percent who did purchase insurance before the introduction of the Puerto Rico plan?

(The following information was subsequently received for the record:)

Before the introduction of the Government Plan consumers purchased the following (earned premiums): 1968 \$13,077,695; 1969 \$15,034,728; 1970 \$15,137,244.

The 1970 figures were not increased over the previous years due to the fact the private carriers had to adjust the premiums by approximately 30%, which amounted to approximately 4.5 millions as a result of the No-Fault Act. This figure also proves the contentions the number of insureds increased as a direct result of more consciousness of the need of excess insurance.

Mr. FOURNIER. Before the introduction, it was close to \$16 million. The actual figures I will have to check. These reports will be available from the insurance commissioner, but the problem with last year is the companies are required to submit reports 6 months after the termination of the fiscal period with some companies requesting extensions of time for submitting their reports.

Senator HART. An additional figure you might provide for the record, once the filing by the private insurers are available, and it would test the overall efficiency of your combined public and private system, how much of the total premiums collected, both by the Puerto Rican plan and the private insurers, is being returned to the motoring public. You can let us have that when you find it.

Mr. FOURNIER. I will, gladly.

(The following information was subsequently received for the record:)

Premiums earned in 1970 by private insurance carriers amounted to approximately 15,658,124, having incurred losses of 8,859,514 for a loss ratio of 56.6%. On the other hand, the No-Fault System collected for a year protection 16,356,780 (earned) and reserved for payment 14,334,975 for a future loss ratio of 87.6%. This loss ratio doesn't include the investment income. We have to point out that the 14,334,975 includes the reserve for payments and payments made also the excess or surplus which according to Section 14 of the Law, limits its use for the payment of claims.

In connection with the total amounts (private and government no-fault) returned to the motoring public, the figures for 1970 are the following:

**Earned premiums:**

Private .....	\$15, 658, 124
Government .....	16, 356, 780
<b>Total premiums paid by motorists.....</b>	<b>32, 014, 904</b>

**Incurred losses:**

Private .....	8, 859, 514
Government .....	14, 334, 975
<b>Total .....</b>	<b>23, 184, 489</b>

Loss ratio: total losses divided by total earned premiums equals 72%.

Thus the combined returns to the public amounts to 72%.

The CHAIRMAN. We will keep this record open in case you want to add some things. We will keep it open for 30 days because we have several days' hearings.

Senator HART. That is all for me, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Moss.

Senator Moss. Thank you, Mr. Chairman. Thank you, Mr. Fournier, for your testimony. It certainly is helpful. It is fortunate for us that we have what we might call a small pilot project going in Puerto Rico. This helps us in consideration of the legislation before us and gives us guidelines as to what we might expect. Do I understand that this no-fault plan just covers injuries arising from accidents?

Mr. FOURNIER. Yes, sir, bodily injuries.

Senator Moss. Has there been any consideration given to including property damage on the automobiles on a no-fault basis?

Mr. FOURNIER. We have received requests from the persons, especially those paying the collision and property damage premiums in order not to pay two premiums and getting a more efficient system, getting collision protection for each and every owner. However, the private companies are fulfilling the needs of the consumers, and although the prices and the costs have increased lately, there is some efficiency and there is not such a pressure as we had before with the victims. The machines can just be junked. You cannot just put the victim away. You have to come to help the victims and the personal injuries.

Answering your question, the direct answer is we are not presently considering at the present time to adopt the property damage or the collision protection for the automobile owner.

Senator Moss. Do you think if it were included, this might increase the likelihood of building safer and stronger cars since there is a recovery established by a regular no-fault system?

Mr. FOURNIER. It might, yes. It might well push the industry to manufacture better cars and also—you know, we do not yet have the figures; however, we are now collecting excellent data, including all the years on the makes of cars and all the details in connection with the accidents. We can point out which are the cars subject to fatal injuries and more serious injuries, and there are other results that can be obtained by analysis.

Senator Moss. The figures have been supplied to me on premiums paid and benefits paid in the field of automobile insurance in 1970. I wanted you to review my arithmetic to see if it is reasonable to draw a conclusion from these figures based on your experience in Puerto Rico.

The information I have is that in 1970 \$14 billion was paid in automobile insurance premiums and that of that amount there was \$7 billion paid to the victims who received either injuries or damage—the damage is calculated a little bit differently than yours, but the overhead cost for administering was \$5.8 billion and lawyers received in fees \$1.2 billion in that period of time. At the same time, it was estimated that there was a loss of between \$10 and \$11 billion by automobile owners or victims of accidents which means there was a shortfall there of payback of between \$3 and \$4 billion. If this system that you have in Puerto Rico had been in effect, the \$5.8 billion overhead would have been reduced to \$1.4 billion, roughly 10 percent of the \$14 billion that were paid in, and, of course, the lawyers' compensation would have been eliminated under a no-fault system because there would not have been payouts for attorneys. That would have increased the amount available by \$5.6 billion, giving a total of \$12.6 billion available to pay off the \$10 to \$11 billion in damage suffered. That would have made it come out even so people would have been restored under the no-fault circumstance. Based on your experience, would that be a reasonable conclusion?

Mr. FOURNIER. It is an excellent analysis and an excellent comparison with the actual results, even though we have not completely eliminated the lawyers' fees. We do have an adjustment. We have a 10-percent figure in the basic protection which the lawyers are able to get. When we have denied the victim, the procedures are reviewed, and when there is a payment authorized to the victim the lawyers will get 10 percent in addition to what they might get through a tort case. However, the comparison you have made I think would be truthful for any system applicable, because each is based—any elements that could be eliminated from the system in terms of lawyers or procedures could be cutting costs to the consumers in the overall payment of the premiums.

Senator MOSS. At least up to this limit of the recovery where the no-fault applies this logic would be correct?

Mr. FOURNIER. That is correct.

Senator MOSS. Tort suits instituted when the damage is beyond the limit still is subject to attorneys' fees and some other costs perhaps, but at least within the limits of what we set for no-fault—

Mr. FOURNIER. Eighty percent of the losses in our system—it could be a difference in other States—fall within the tort suit exclusion limit, \$3,000—\$2,000—\$1,000. So we are cutting the most frequent claims which were the most costly ones, the ones that the company had to pay the nuisance values in order to get rid of a case, in order not to go to court, in order not to pay for an investigation, in order not to pay for additional administration and reviewing the cases in each district office and at the home office.

Senator MOSS. I noted one statement you made in your presentation that I thought was quite interesting. You said: "The data collected reflects the true state of affairs of the occurrence with respect to automobile accidents since the wrongful act of the person insured is not taken into consideration in setting the amount of compensation." What you are really saying is you probably get more truthful answers from

those involved because they are not trying to coverup fault when they answer the questions.

Mr. FOURNIER. That is right.

Senator Moss. Being an old prosecutor myself I have great sympathy for that. I know how worrying about the fault element, how difficult it is for people to give an accurate reconstruction of the event when an accident is being examined. They are always trying to cover the fault part where they might be involved and might be charged with contributory negligence.

Mr. FOURNIER. You are completely right.

Senator Moss. Thank you. I think your testimony has been most enlightening, and we are fortunate indeed that Puerto Rico has stepped off and is trying to find some answers that we are now groping for here on a national level. Thank you.

Mr. FOURNIER. Thank you very much.

The CHAIRMAN. Supposing that you had underestimated the amount of accidents or you had a rash of accidents more than usual and the fund would not cover it, do you have any plans for a reserve fund in this?

Mr. FOURNIER. I can explain to you——

The CHAIRMAN. Or would you have to go to the legislature to be reimbursed?

Mr. FOURNIER. No. Automatically we would be reimbursed by the general funds of the Commonwealth of Puerto Rico.

The CHAIRMAN. Of course, it would take an unusual set of circumstances before the legislature would raise the \$35?

Mr. FOURNIER. No; the premium is controlled by the insurance commissioner as he controls the private insurance companies.

The CHAIRMAN. He has a flexible way. I suppose he gages it by actuarial figures?

Mr. FOURNIER. The actuarial reports have to be submitted on a yearly basis just like the independent insurance bureaus.

The CHAIRMAN. But the insurance commissioner's estimate of \$35 has proven during the operation to be pretty well correct; the estimate?

Mr. FOURNIER. That is correct.

The CHAIRMAN. It is 12:30 p.m., and we will have to recess the committee until 2:15 p.m., and we thank you both for coming.

(Whereupon at 12:30 p.m., the hearing was recessed, to reconvene at 2:15 p.m., the same day.)

#### AFTERNOON SESSION

Senator HART (presiding). The committee will resume.

The chairman, Senator Magnuson, will join us if his schedule permits.

The next two witnesses may wish to testify jointly. I don't know if that is the right way to put it. In any event, it has been suggested that you both come up and proceed as you think best serves your purpose. I know we have received statements from Robert J. Klein, economics editor of Consumers Union, but not from Mrs. Erma Angervine, who is the executive director of the Consumer Federation of America.

You may proceed as you would like.

**STATEMENT OF ROBERT J. KLEIN, ECONOMICS EDITOR, CONSUMERS UNION, MOUNT VERNON, N.Y.**

Mr. KLEIN. Thank you, Mr. Chairman.

My name is Robert J. Klein. I am economics editor of *Consumer Reports*, the magazine of Consumers Union. I am pleased to appear today in response to this committee's invitation to testify on the need for reform of the Nation's automobile insurance system.

An undercurrent of public discontent with automobile insurance became evident as early as 1961, when Consumers Union began its first comprehensive study of this consumer service. The next year we published a series of reports. They told how to buy insurance, which of the larger companies appeared likely to give the best service, and what seemed fundamentally wrong with the kind of insurance consumers were forced to buy.

I would like to read you a brief passage from that series. We said:

Either automobile liability insurance or negligence law by itself might be defended as reasonable, but today's combination of the two produces results which are so unjust, so capricious, and so wasteful of both the policyholders' and the accident victims' money that most laymen find it hard to believe the facts when they are first presented.

Nine years later the Department of Transportation put the finishing touch on that indictment, and I quote:

The existing system ill-serves the accident victim, the insuring public and society. It is inefficient, overly costly, incomplete and slow. It allocates benefits poorly, discourages rehabilitation and overburdens the courts and the legal system. Both on the record of its performance and on the logic of its operations, it does little, if anything, to minimize crash losses.

One of the less discussed evils brought about by the tort liability system of compensating highway injury victims is that it corrupts the practice of the law itself. I, myself, am not competent to discuss this condition, but in a forthcoming book called "The Injury Industry," law professor Jeffrey O'Connell, the coauthor of the Keeton-O'Connell Plan, devotes a chapter to the inevitability of the ambulance chaser who against the canon of his profession seeks out accident victims or has them sought out for him by professional "finders."

Well, in 1967, Consumers Union cosponsored a conference on automobile insurance claims at the University of Illinois Law School. In 1968 we endorsed the Keeton-O'Connell basic protection plan, the pioneering no-fault plan. In 1970 we published the results of a survey of the experiences with automobile insurance of some 230,000 of our members. Again the findings led us to advocate no-fault insurance. Later in the year we cosponsored another conference on insurance reform, this one in collaboration with the University of Minnesota. Colston E. Warne, our president, served as chairman of the Consumer Advisory Committee of the Department of Transportation's Auto Insurance and Compensation Study. As a result of this decade of exposure to the problems of automobile insurance, perhaps we can speak about them with some authority from the consumer's point of view.

From that point of view, the situation has become absurd. Consumers find themselves ordered or compelled as car owners to buy

automobile liability insurance from private companies, yet those companies refuse to sell insurance to many of us. According to the DOT studies, 14 percent of American motorists have had their insurance canceled. And that figure is no doubt obsolete. Consumers Union has lately been flooded with complaints from people whose auto insurance companies have canceled or refused to renew their policies. In the past year some of the most prestigious insurers, including Nationwide Mutual, Liberty Mutual, and State Farm Mutual, have mercilessly reviewed their underwriting standards and, as a result, have rejected many thousands of policyholders. Many people tell us they are being canceled by companies they have done business with for 10 or 20 years.

I would like to add that there is a concomitant ill that goes with this threat of cancellation—the increase in payment if one files an accident claim. As a result many people do not file accident claims, or they settle their own claims rather than risk their insurance company's settling them. In our survey of 230,000 people, 6 percent said that they had paid their own liability claim rather than let the insurance company handle the claim. What this amounts to is a kind of hidden deductible which the insurance policyholder doesn't benefit from in his premium. That is, he doesn't make any savings in his premium but he simply accepts the liability anyway.

Well, it was intolerable that, in earlier years, insurance companies were found to be "red lining" poor urban areas, abandoning primarily the low-income, minority-group customer. Now this shedding of risks has made itself felt across the demographic board. Large numbers of middle-class, suburban, white motorists—middle America, if you like—have been denied coverage in the regular market and have been relegated to assigned-risk pools. If politicians haven't read the handwriting on the wall, insurance agents surely have. Richard E. Peck, president of the Independent Mutual Agents of Connecticut, warned his fellow agents in March, "I think all hell is about to break loose." According to the National Underwriter, he told an agents' meeting:

We—and the public—need better statutes to guard against policy cancellations and agency terminations. We'd better get them or public wrath such as we've never known is going to be unleashed against us. We're going to hear about no-fault automobile insurance until we hear it in our sleep. We'd better be ready to either propose or back the best course of action . . . —because if we don't, somebody is going to shove something down our throats that we don't like the taste of at all.

In the April issue of Consumer Reports we have described 14 goals for automobile insurance reform. You will find them in our exhibit A. I will be glad to read them aloud if you like.

Senator HART. No, we will include them in the record at the conclusion of your testimony. I read that April issue, and I think I have already put that into the Congressional Record.

Mr. KLEIN. Fine.

We advocate in those 14 points a thoroughgoing Federal no-fault system. One of our goals is a noncancelable, guaranteed renewable automobile insurance policy—a policy that everyone in the insurance business must sell to all comers, so long as they are licensed to drive or eligible to register a car and so long as they pay the premiums. It is not the responsibility of insurance companies to decide who shall

U.C. BERKELEY LIBRARY

and who shall not drive. That should be the responsibility of the State.

Does it sound outlandish and impractical to require insurers to sell policies to all eligible customers? Then consider the law in the Federal Republic of Germany, as described in the DOT's report, "Comparative Studies in Automobile Accident Compensation":

Automobile insurers in West Germany are under a statutory obligation to accept applications for liability insurance, and the regulatory authorities see to it that insurers comply with that duty. While an application may be rejected for certain limited reasons, there is no danger that an applicant who is ready to pay the applicable premium will be lawfully rejected by each of the more than 100 insurers writing automobile insurance in Germany. This system not only eliminates the need for any supplementary facility like the American "assigned risk plans," it also prevents excessive "skimming." All companies get about equal shares of desirable and undesirable risks.

As you will note in our exhibit, only one major automobile insurance reform plan would require automobile insurance companies to deal with everyone. It is the Hart-Magnuson plan, now before this committee for consideration. Unfortunately, the concurrent resolution proposed by the Department of Transportation does not recommend this reform. In our opinion, failure to deal directly with the problem of making insurance fully accessible to every motorist is a major shortcoming of the administration's proposal.

Some will say that a first-party, no-fault automobile insurance policy of the kind being proposed would automatically solve the cancellation problem. That assertion flies in the face of recent experience. Try to buy burglary insurance in Manhattan. Try to buy flood insurance in Mobile. CU's mail also hints at the beginning of a wave of cancellations of homeowner's insurance policies. All these are first-party no-fault coverages.

The fact is, insurance companies have drifted away from the very foundations on which insurance is built—the broadest possible spreading of the risk. One man who worries about this trend is George K. Bernstein, Federal Insurance Administrator. As he said to the Association of the bar of the city of New York last month:

Perhaps the most basic principle of insurance—upon which it grew, but which in recent years has been in large measure abandoned—is the need to spread the risk. Effectively implemented, the principle of insurance requires the placement of a large number of risks in a single category in order for classification and territorial rate-making to produce sound results. Industry survival is unlikely if it continues to pursue an abortive law of small numbers . . . In the fire and extended coverage area, this form of enforced isolation has contributed to the segregation, in some areas, of over one-third of the insureds in [assigned risk pools].

No-fault insurance, while not by itself the answer to the cancellation problem, is certainly the answer to the scandalous social problem of the uncompensated or undercompensated accident victim. You have all read the hardship statistics in the DOT studies: 55 percent of seriously injured victims receive no compensation from automobile liability insurance. Of injured people who do receive liability insurance benefits, those whose losses are less than \$500 collect an average of four times their losses. On the other hand, people with more than \$25,000 of out-of-pocket medical expenses and lost wages average less than 15 percent recovery from liability coverage. When serious injury occurs, 5 percent of the stricken households have to send other members of the family

to work; 3 percent have to move to cheaper housing; 20 percent have to take money from savings or the sale of property; 12 percent miss debt payments.

Senator Hart, you have made those figures much more vivid by setting out the plight of those whose losses were \$5,000 or more. Their hardship percentages, of course, are much higher than those that I have read.

To put some flesh and blood on those figures, we would like to tell you of an actual case of uncompensated loss and its consequences. We cannot disclose the victim's name because his claim may soon be in litigation, but his plight illustrates that of thousands of highway victims every year.

The man, whom we shall call Mr. Johnson, operated a diner in a small town. A few years ago he needed an operation on his knee. It was going to keep him off his feet for a prolonged period, and so he temporarily leased his diner. A couple of years after the operation, Mr. Johnson's doctor said he would soon be able to put aside his crutches and resume his livelihood. Then came the accident. A youthful driver, who Mr. Johnson claims was driving in the wrong lane, hit his car head-on. His knee hit the dashboard. The next day the surgeon gave him the bad news. The accident had totally undone the operation, and Mr. Johnson will have to wear a knee brace and use a crutch for the rest of his life. He will never be able to resume operation of his diner.

The youthful driver's insurance company accepted liability and paid almost \$500 to fix Mr. Johnson's car. In compensation for his medical expenses and lost income, Mr. Johnson was offered \$1,000. Furthermore, the adjuster warned him, a witness had been located who would testify that he was not driving entirely in his own lane when the accident occurred. Mr. Johnson has hired a lawyer and will soon take up the tortuous course of pressing suit. At most he can hope to win only \$10,000, the maximum liability coverage in the youthful driver's assigned risk policy. If he is lucky enough to collect the \$10,000, he can expect to pay out at least \$3,000 to his lawyer for legal fees and court costs.

Mr. Johnson's loss will be far greater than \$7,000. Medical bills thus far are \$472. Lost earnings—money he would have earned, after taxes, behind the counter of his diner—amount to at least \$10,000 per year, based on his past earnings. Mr. Johnson is 62 years old now, and he had planned to keep working until he was 70. But even if he retired at 65, his wage loss would reach \$30,000.

The Johnsons can illafford their loss. Already they find it impossible to continue paying their daughter's college tuition. She has gone into debt to stay in school. The Johnsons are living on social security disability income and the money they had been saving for retirement. That money, they told us, is dwindling rapidly. The future for Mr. and Mrs. Johnson looks bleak indeed.

Under a no-fault system such as the Rockefeller-Stewart plan, the American Insurance plan, the Hart-Magnuson plan, or the DOT plan, the Johnsons would have been able to weather this crisis without financial hardship. We think there are millions like them.

Senator HART. Mr. Klein, the case you are describing can be matched many times. Here you have got a judgmentproof young

driver of the other vehicle with only the minimum \$10,000 insurance which sets the ceiling on the outside recovery possibility for Mr. Johnson. As you say, Mr. Johnson would be much better off under the Hart-Magnuson and some of these other plans.

I don't want to burden the Hart-Magnuson proposal beyond its ability to be carried through the Congress, but let's assume Mr. Johnson was a younger man and this set of circumstances applied, even under the bill that the chairman and I have introduced he would be compensated only for about up to \$30,000—instead of being 62, if he was 42, that raises a question clearly as to whether there should be consideration given to raising the wage replacing limits in these plans. I know how you would feel, as I think most people would, that it would be desirable to put Mr. Johnson back as far as we can for the maintenance of his family, but how much more do you think it would cost policyholders generally if we did talk about increasing that \$30,000?

Mr. KLEIN. I should say this is a large coincidence that Mr. Johnson's letter came to my attention when this invitation to testify also reached me. It was just coincidence that his loss was \$30,000 which is also the ceiling in your plan.

As you know, S. 945 provides a wage replacement system for as long as necessary up to a wage level which the Bureau of Labor Statistics would say is adequate to maintaining yourselves in whatever community you live in. I think it is somewhere around \$12,000 a year in most communities, depending on the city, of course, and your \$1,000 a month figure is right on the nose. We would rather see a bill not set that figure of \$1,000 but match it to a Bureau of Labor Statistics figure. As to how much it costs, Consumers Union isn't an actuarial source, we haven't been able to cost these 14 points ourselves, but when you try to use existing plans which have been actuarialized, the New York State plan, which apparently had good actuarial underpinnings, would replace wages indefinitely, not up to \$1,000 a month or any particular limit at all but up to the amount lost.

So really if that can be done with a saving of premium, the objective that we set forth ought to be able to deliver without any great increase in premiums, with a saving in premium over the present system, too. We all realize, I think, that wage loss is the biggest expense in the insurance situation, and, as we point out, the actuary for the Keeton-O'Connell plan set a limit of \$10,000, which he thought was necessary in order to bring savings to the public. Nobody knows the answer to your question.

In Massachusetts, the situation suggests that the saving is going to be much larger than anybody dreams of.

Senator HART. Although it was not intentional, I have discovered that I have interrupted you at a point where the Senate is engaged in a rollcall vote. So, I will have to recess for about 10 minutes.

(Short recess.)

Senator HART. Given what happened when I interrupted you, I won't interrupt again, but I agree with you it is a question as to which there is no precise answer. The elements that you described are the ones that I think have to be cranked into the answer.

Mr. KLEIN. Yes, it is possible that a plan will have to be worked in step by step.

To continue, of the many important details of the reform plans before this committee, we will dwell on only a few today.

The first is the question of whether, in a no-fault system, automobile insurance coverage should take precedence over other insurance that might cover the same loss. We fully agree with the objective of coordinating benefits to eliminate duplicate coverage. Many people, for example, are insured through their employers for some portion of their hospital and doctor bills and, in some instances, for major medical expenses. Their insurance is written in group plans, and, in the case of Blue Cross-Blue Shield and some other plans, is produced on a nonprofit basis. Of \$1 paid into Blue Cross, better than 95 cents is returned in benefits. We heard today that the ratio is 89 cents on a dollar in Puerto Rico, and I am sure when their startup costs are spread over a number of years that that will go up to 95 cents too. Of \$1 paid into commercial group health and accident plans, more than 80 cents is returned in benefits.

The percentage of premium returned as benefits is the chief measure of efficiency of an insurance plan. How does automobile insurance stack up? The liability insurance which so many of us want to be rid of is grossly inefficient. According to the DOT, it returns only 50 cents on the dollar. According to other studies, it returns less than 45 cents on the dollar. That means consumers must pay more than \$2.20 in premium to get \$1 of benefit.

Furthermore, most of that 45 cents does not pay for uncompensated economic losses. It pays instead for losses already covered by other insurance and for unmeasurable losses under the catch-all heading of pain and suffering. Hence, we'll be well rid of liability insurance.

But what of the efficiency of other kinds of automobile insurance? What of the first-party coverages for collision damage, fire, theft, and medical payments? How efficient are they? Far less so than Blue Cross and commercial group coverages. First-party car insurance returns only about 65 or 70 cents of the premium dollar.

Keep in mind that consumers will be required to buy no-fault coverage under all the plans being studied. We have no quarrel with that. But we do quarrel with a system that would make us buy relatively inefficient and therefore relatively high-priced automobile-medical coverage in place of our present lower priced group coverages. That, we regret to say, is what the DOT plan would do by its insistence on making automobile insurance the primary coverage for injury and wage loss. It is true that the DOT plan gestures toward inviting the group hospital and medical plans to compete as automobile-injury insurers. But we fear that, with Blue Cross rate increases meeting heightened public resistance, some Blue Cross plans might welcome the chance to provide the illusion of rate stability by shedding coverage of auto accident victims.

The no-fault policyholder like the liability insurance policyholder will see rising medical costs reflected in the price of his insurance. How to control medical and hospital costs is beyond the scope of this hearing, but it is a problem that Congress must face as it explores various national health insurance proposals.

In the long run the social and health insurance plans are part and parcel of what we are talking about here in the way of first-party automobile injury coverage, and in our 14 points, Senator, we try to fash-

U.C. BERKELEY LIBRARY

ion a plan which would work in. We assume the time is coming when hospital and medical bills will be covered for all Americans through some sort of insurance or prepaid or national health service plan. Of course, that will do a lot to solve the automobile insurance cost problem.

Consumers Union's goal calls for auto insurance to cover only what less-costly insurance plans do not cover. In a compulsory insurance situation, that is the only fair way. If auto insurers can develop highly efficient, price-competitive group coverages, fine. If not, they should cover only the excess losses.

Even in the best of markets, one of the consumer's worst problems with buying insurance is the hopelessly complex matter of getting good value for his money. The insurance companies have fragmented the population into so many price rating categories that, as the Federal Insurance Administrator has pointed out, there are more than 7 million potential slots into which an insured person might fall. Imagine, 7 million different prices for the same product.

That is why Senators Hart and Magnuson have included in their legislation two crucial reforms to help consumers with their insurance shopping. Auto insurance ratemaking would be put on a standard basis. Consumers could easily shop and compare rates, thereby promoting greater efficiency in the open market tradition.

There is one serious problem with this sort of price competition. Some insurance companies might choose to compete by lowering the quality of their service—primarily by attempting to cut down on claims payments. Consumers Union's own recent survey of its members' auto insurance claims experiences indicated a significant difference in claims handling by 25 of the largest insurers. Among respondents to our questionnaire who had collected on first-party auto insurance claims for collision, fire, theft, medical payments and such, only 7 percent said they had been paid too little money. But the record was not by any means the same for every company. One company underpaid 11 percent of its claimants in our survey, while another company underpaid only 3 percent. Our statistical analysis indicated the difference between a 3 percent and an 11 percent level of satisfaction with claims payments was a highly significant difference.

One good way to prevent insurers from degrading their service would be to subject all companies to a continuous survey of the kind we conducted. The Hart-Magnuson legislation would mandate a continuing survey by the Government, with the results made available to the consuming public. The DOT plan, on the other hand, would leave consumers in the dark about both price and quality.

It is not immediately clear, however, from reading the Uniform Motor Vehicle Insurance Act, S. 945, how it would aid price comparisons and claims-paying comparisons. The intent is there, Senator Hart tells us. In his introduction of this legislation last year, he said :

We are also opening up a whole new world for most consumers—one where they do not take what they can get in auto insurance, but take what they want.

In order to know which company offers the soundest deal, a consumer must know not only the prices for his classification but the claims-paying practices of the company. Therefore, the bill provides that such information be reported to DOT. The Secretary, in turn, will make it available to the public.

This is exactly what the consumer needs. We hope the intention can be made more explicit in the act itself.

Despite the timidity and shortcomings of the DOT plan, Consumers Union believes the plan worthy of consumers' support at the State level. There is something to be said for using the States as laboratories for experimentation with innovations in auto insurance. But acceptable legislation in the States will run head-on into the opposition of lawyers. As the DOT study found out, a significant percentage of lawyers make most of their living from personal injury clients. No-fault insurance would take away that living. Even a modicum of no-fault coverage, as in Massachusetts, threatens to eliminate the personal-injury lawyer's clientele. In the first 2 months of operation, the Massachusetts system saw injury claims drop by 50 percent, when everyone thought they would rise. No one as yet knows the explanation, but State Insurance Commissioner C. Eugene Farnam told us last month that the drop was probably due in large part to the discouragement of spurious claims.

Unfortunately for the chances of auto insurance reform, State legislatures tend to be dominated by lawyers. In New York State the bar association has mounted a very costly direct-mail advertising campaign against the Rockefeller-Stewart plan, which closely resembles the DOT plan. Secretary Volpe's recommendations seem to have stimulated increased efforts in the legal community to head off no-fault insurance at the legislative pass.

For political reasons and also for the sake of achieving an acceptable level of uniformity of insurance law on our interstate highways, Federal legislation is the motorist's last best hope. The Hart-Magnuson Uniform Motor Vehicle Insurance Act comes closer than any other plan now under consideration to meeting Consumers Union's 14 goals for reform. Its most serious defect, in our opinion, is that it would leave the regulation of automobile insurance rates in the hands of the States. On the record, most State insurance departments simply cannot cope with the problems of rate regulation, financial solvency, and consumer complaints. Under this regime, the auto insurance industry claims it is heading for bankruptcy and is fleeing from the business. We would prefer to see the rate-regulating and the fiduciary aspects of regulation transferred to the Federal Government where competent legal, financial, and actuarial skills could be most efficiently and effectively used. The whole setup could probably be financed with a tax of 50 cents a year on each motor vehicle insurance policy. Complaint handling, however, might best be left to the State insurance agencies, which are closer to the people.

The need for insurance reform is immediate. Consumers can wait no longer for States to act individually. We are faced with a crisis of uninsurability, runaway rates, and uncompensated victims. Only Washington can solve the problems effectively. Consumers Union commends this committee for its inquiry. By voting out a bill with all the features of the Hart-Magnuson bill and by improving it along the lines suggested here, you will be doing a magnificent service not merely to 90 million owners of private cars but to all 200 million Americans in this motorized society.

Thank you.

U.C. BERKELEY LIBRARY



Senator HART. Thank you, Mr. Klein, both for the support you voice and for the suggestions you make with respect to improvements. Mrs. Angevine, you may proceed.

**STATEMENT OF MRS. ERMA ANGEVINE, EXECUTIVE DIRECTOR,  
CONSUMER FEDERATION OF AMERICA, WASHINGTON, D.C.**

Mrs. ANGEVINE. My name is Erma Angevine, executive director of Consumer Federation of America. The Consumer Federation's membership represents some 30 million Americans and is comprised of State, local, and national consumer organizations and encompasses volunteer organizations with a consumer interest, including many of the Nation's leading labor unions.

In January of this year, the delegates from these member organizations met here in Washington and asked that CFA come up with some guidelines on auto insurance reform. At that same time they set as one of their top priorities the passage of auto insurance reform legislation.

CFA's board of directors followed up this request by asking Consumers Union to make available to the members of Consumer Federation of America the position paper which it was drafting in consultation with other consumers. CFA released this guideline to its members on March 8, including the 14 points Mr. Klein has been discussing.

We are, therefore, here to say that CFA supports Consumers Union's statement and that our membership is in support of the testimony of Bob Klein. We would like to have CFA's name added to his testimony as a supporting witness.

Thank you.

Senator HART. That certainly will be done.

Mrs. ANGEVINE. I would also request to put in the news release announcing this, if this meets with your permission, sir.

Senator HART. The news release will be printed in the record.

(The document follows:)

CONSUMER FEDERATION OF AMERICA,  
Washington, D.C., March 8, 1971.

**C.F.A. PROPOSES GUIDELINES FOR AUTO INSURANCE REFORM**

WASHINGTON, March 8—The Consumer Federation of America today sent its 189 member organizations a set of guidelines for automobile insurance reforms to support and press for at state and federal levels.

Under the CFA "no-fault" guidelines, all medical costs and most lost wages would be paid for no matter who is to blame for the accident.

The auto insurance reform guidelines were promised to the membership at the CFA annual meeting here in January. The final position paper was drafted by Consumers Union following consultation with representatives of other consumer groups. A detailed report on the guidelines will be published in the April issue of *Consumer Reports*, CU's monthly.

The Consumer Federation's membership represents some 30 million Americans and is comprised of state, local and national consumer organizations and encompasses voluntary organizations with a consumer interest, including many of the nation's leading labor unions.

CFA's executive director, Erma Angevine, said, "The time has come for a consumer crusade for significant auto insurance reform and our membership needs to be in the forefront of this fight."

The CFA statement says something must be done to pay the cost of highway injuries, while stopping "the runaway price of insurance and the wave of millions of cancellations, nonrenewals and rejections of motorists by insurance companies."

CFA's guidelines adopt in principle the so-called "no-fault" approach of such proposals as the Keeton-O'Connell plan, the American Insurance Association plan, the New York state plan, and the more recent plan proposed by U.S. Sen. Philip A. Hart.

The Nixon Administration has not yet announced its position on auto insurance reform.

The CFA concepts incorporate many of the features found in the four major no-fault proposals and amend some in an attempt to provide a set of criteria that would effectively meet consumer needs if incorporated in a federal act. It would eliminate the \$10,000 limitation in the no-fault benefits proposed by the Keeton-O'Connell plan, and CFA's proposal for unlimited wage replacement for disabled victims is more extensive than all but the New York state plan.

The CFA stance on reform expands on all but the Hart proposal to include the provision that auto insurance policies must be noncancellable, guaranteed renewable, and available in the open market to all eligible consumers as long as they pay the premiums. CFA agrees with the major proponents of auto insurance reform that every car owner would have to buy the basic non-fault automobile insurance from a company of his choice, and that he may buy optional extra coverage.

Under the no-fault proposals, highway victims would not have to prove another driver's negligence in order to be paid back the injury expenses taken from their own pockets. Because it says auto insurance is so costly and return so little of the premium. CFA's guidelines would have to pay only for injury cost not covered by health insurance, sick leave, Social Security and other forms of insurance.

The guidelines also call for a ban on unilateral cancellations and nonrenewals of coverage by insurance companies. Insurers would have to sell insurance to everyone eligible to drive, instead of only being required to take its share of "assigned risks."

If possible at a reasonable premium, the new insurance would pay for more than out-of-pocket losses to all permanently disabled or disfigured victims. They would receive compensation for their pain and suffering as well. The guidelines state, however, that it may prove necessary, because of the cost, to preserve the permanently crippled victim's right to sue. Except for that one possibility, law suits based on driver negligence would be eliminated.

Regulation of the insurance industry, its rates and practices would be moved to a new federal agency from the individual states. Premium rates would be open to competition, and every company would have to use the same rating system so that consumers could easily compare prices. The government would also publish data permitting consumers to judge the quality of an insurer's claim service.

Insurance covering damage to cars would remain optional. Motorists would have three choices: They could choose no auto damage insurance. Or they could buy insurance under which their own company would pay them when another driver was at fault. Or they could choose today's collision insurance.

Senator HART. Movement of legislation of this sort is always difficult for reasons which are perfectly understandable and not improper. I think if you were making book a year or 2 years ago you would not have anticipated that we seem to be as close to enacting no fault legislation of some sort by this Congress as we are, but no matter what the good omens may be, when the crunch goes on, as it will, the position of the Consumer Federation of America in support of the effort will be of vital importance.

So, in your next mailing, report that the troops should be prepared to defend the position they have now taken and seek to persuade others to join the ranks.

Mrs. ANGEVINE. I shall indeed do so.

Senator HART. With special emphasis on enlisting the Members of the Senate to join.

Before asking other questions, coming back on the trolley car from that rollcall vote, I sat with a colleague who asked me what I was doing and I said we are having hearings on no fault insurance, and

U.C. BERKELEY LIBRARY

he said well, it certainly needs a lot of change, but tell me, if some clown goes driving down the road at 90 miles an hour and hits a culvert, why should I pay for him. For two reasons, to report first that our colleagues not on this committee are thinking about this problem, and, second, perhaps out of their own wisdom or at the suggestion of somebody else they are now asking this question about the proposal. What is the best answer, as you see it, to give to a person who has that concern?

Mr. KLEIN. I can think of two answers that might satisfy people. The first one is this: If your son crashes while barreling down the road at 90 miles an hour, is he going to receive all the medical care he will need? Who will pay for that care if you cannot? Most insurance is designed to pay regardless of fault. If the speed demon is killed, his life insurance still pays off. If your house catches fire because you were careless with matches, your fire insurance still pays off.

To cite the experience of some speed demon is to carry matters to absurdity. All of us run terrible risks when we drive, and the system you are proposing alleviates those risks.

The second answer is you already pay for that fellow. If we have a compassionate society at all, we see that he is taken to the hospital and tended to, medically. Of course social security doesn't ask how you are injured in paying disability payments. We think that is right. Society has to carry these burdens anyway. They should be carried in a way that is dignified and yet as inexpensive as possible.

Senator HART. Thank you.

For the record, you commented as one of the desirable features in the proposal, S. 945, that it would prevent skimming. Briefly for the record, describe what that term means.

Mr. KLEIN. As I understand it, another expression for it is creaming the market. The objective is to sell insurance only to the people who are not likely to have claims. If you can restrict most of your selling to those people you will have a bigger underwriting gain and you can compete well in price. So, insurance companies have tended, some at least have tended to skim the market, swim only the low risks and avoid the high risks.

Senator HART. Some of these reform plans that you discussed, that are referred to in your testimony, provide for the sort of subrogation between the carriers. They provide for the determination of fault as between the insurance companies even though we would go to a no-fault basis for payment of the individual. How do you react first of all, to the suggestion that we could have no-fault with respect to the individual's claims but let the insurance companies battle it out on a negotiation basis afterwards?

Mr. KLEIN. I think if the insurance system were set up as we suggest, so that every insurance company must accept every eligible applicant and so that the surcharges and discounts are standardized, they probably would not need to have subrogation.

What they are doing, I really do not know, Senator, but one would deduce that when you skim the market and do not subrogate, you lose the advantage of skimming the market. Of course, subrogation is an expense. It is one of these overhead factors that makes automobile insurance so darn expensive, and we are very much against that.

Senator HART. It surely would detract from the increased efficiency that we think we are building in the system.

Mr. KLEIN. Oh, yes.

Senator HART. And it could cost the insurance more absent that feature?

Mr. KLEIN. It is interesting that Professor Keeton in the Keeton-O'Donnell book proposed an approach to collision damage coverage. In their book they said there ought to be two choices. You could buy collision insurance which paid regardless of fault or you could pay insurance that would only pay you if the other fellow is at fault. If that were the case you would collect from your own insurance company.

Of course, that might open this business of subrogation. But, instead of subrogating, Keeton suggested every once a year or so insurance companies would get together and simply balance their books. Those who paid too much in proportion to their premiums to cover claims of that sort would collect from those who paid too little. That would certainly minimize the problem. Perhaps we can do away with it altogether.

Senator HART. In addition to the added cost, if there was subrogation as between the insurance companies, would not the policyholder, though he had been paid on the no-fault basis, be spending part of life in the courthouse just as he is now?

Mr. KLEIN. One would expect he would, yes.

Senator HART. The matter of inconvenience is still present even though you have been paid the cost that you incur.

Mr. KLEIN. If that were necessary, it would be more than an inconvenience. Some people would have to give up a day's wage to appear. It is a most undesirable situation. I understand that Massachusetts has left the situation that way.

Senator HART. You, I think, refer to this in your statement but I think it would be useful for separate explicit comment on the record.

You endorse the Hart-Magnuson provisions, including the assurance that insurance would be available to consumers of every economic-social level. Now, this is not an entirely new concept, is it? The Federal Government has taken steps in other areas to insure the availability of insurance notwithstanding the social or economic strata; am I not correct on that?

Mr. KLEIN. If you are referring to the plan for fire and other damage to real estate, yes.

Senator HART. As a result of the concern with respect to the high level of crime, we are clearly following the pattern we set there.

Mr. KLEIN. Of course, the trouble is the private companies flee to these plans with the risks that they don't want to carry and, as a result, much too much insurance is put in those plans. As we said in our testimony, according to Mr. Bernstein, the Federal Insurance Administrator, they are defeating the principle of insurance by laying off the bad risks on Government and more and more narrowing their own customer field. The principle is established, yes, in fact, I think one could also use the example of life insurance to the GI's.

The Government insists that private companies must sell at their usual rates to GI's even if they come out of the service with a serious disability.

Senator HART. I am sure as we go along others will occur to us. Certainly, it is not a concept that just appeared yesterday from Mars or from Russia.

We talked about your 14 points. How close can you come in terms of dollar figures to identifying the cost of acquisition by policyholders of no-fault insurance which would include those 14 points? Would it cost them more or less than it does to acquire the average coverage available today? Do you have any idea of how much more available, if that is the word for it, the insurance product would be under the 14-point system?

Mr. KLEIN. I am afraid even if I go back to my office and tried, I wouldn't have figures for you on that question. I think we dealt with it in the midst of my testimony as much as we can discuss it. We think it will cost less, the premium will come down. We base that opinion on the actuarial studies of the AIA and New York State and the Keeton-O'Connell plan, including Mr. Robert Bailey of the Michigan Insurance Bureau. Mr. Bailey, the chief actuary there, said in 1967 this was an unworkable plan and was very much against it. In 1970 he re-analyzed his figures and came out in favor of it.

We are not in the process of costing this out. I don't think we could. I don't think it is within our competence and perhaps it is not within anyone's competence to write it down to the last penny. Obviously, when the bill is enacted, the work will have to be done. The data are there. The data from the DOT study on losses, particularly wage losses and long-term disability, are there, and they need to be updated. That plus the rate of claims that we see at places like Massachusetts.

Senator HART. You were present I believe this morning when the Senator from Utah, Mr. Moss, asked a question of Mr. Fournier, that concluded, as Senator Moss put it, that it is logical to use this set of figures to test, the potential for increased sums being available to compensate victims under the no-fault. Do you recall that exchange?

Mr. KLEIN. Yes.

Senator HART. Do you agree with the rather general outline of the arithmetic that they engaged in when going through it together? Would you have any quarrel with it?

Mr. KLEIN. No, but I think Mr. Fournier made it clear that their costs are largely startup costs.

Senator HART. No, I was jumping and thinking of the exchange.

Let me summarize it again and get your comment without incorporating it by reference.

As I recall it, about \$14 billion is the figure that is accepted as the total premium paid in 1970 for both personal injury and property damage of automobile insurance, and the overhead costs, the costs of selling and so on, run about \$5.8 billion, and there is a fee for lawyers of \$1.2 billion, and a figure of about \$7 billion for payment to accident victims and policyholders for both injury and damage to the cars.

The Department of Transportation study used a figure of about \$11 billion for injury and property loss. So—this was the exchange with Senator Moss—if there is \$14 billion of premiums paid, with administrative costs of about 10 percent, you computed administrative overhead of \$1.5 billion leaving out of the \$14 billion a total of \$12.6 billion for all injury and property loss.

Now, the DOT, in the range of accuracy, says there is a loss of \$11 billion out of premiums of \$14 billion. You could on that basis reduce by a billion six dollars as well as pay all loss of the \$11 billion and the administrative expense of \$1.2 or \$4 billion whatever that figure was. Does this jive with your impression?

Mr. KLEIN. Not so long as you are discussing property damage as well as injury. We will never get property damage insurance, collision insurance from the automobile insurance companies in any way related to the ratio of the benefit to the premium. We are lucky to get 70 percent back from the automobile insurance industry. We would have to separate the personal industry loss. Their promises are greater for those savings.

Senator HART. Let me, without pushing the clock beyond our luck, permit you to look at that question again. I am not talking about the present private insurance pattern, and it is not fair really to throw those figures out and ask you for an answer, but let us have an answer for the record responsive to that pattern of figures.

(The following information was subsequently received for the record:)

Mr. KLEIN. That pattern of figures certainly would indicate that all fatality, injury and property damage losses from highway accidents could be compensated in full with the money currently spent on automobile insurance premiums, if we had a no-fault system operating at 90 percent efficiency. Unfortunately, the pattern of figures is incorrect. Accident losses of \$11 billion were approximately those estimated by the Department of Transportation for 1967.<sup>1</sup> Insurance premiums were those for 1970, and they include nonaccident coverages for fire, theft and comprehensive.

A comparison of 1967 losses and premiums would look like this:

*Compensable losses*<sup>2</sup>—(DOT study)

Medical expenses.....	\$1, 243, 000, 000
Wage loss.....	4, 239, 000, 000
Other.....	207, 000, 000
Property damage.....	4, 860, 000, 000
Total .....	10, 549, 000, 000

*Premiums written*<sup>3</sup>—(Best's aggregates and other sources)

Bodily injury liability.....	\$4, 622, 000, 000
Property damage liability.....	1, 943, 000, 000
Collision .....	2, 289, 000, 000
Total .....	8, 501, 000, 000

In 1967, then, \$8.5 billion of premiums would have been available to help pay \$10.5 billion of losses. Assuming a no-fault system capable of operating with administrative costs of 10 percent of total premiums, full compensation would have required a premium input of \$11.7 billion, an increase of \$3.2 billion from actual 1967 premiums written—or 38 percent additional premium input.

While the problem of financing the nation's highway accident losses is not as easily solved as Senator Hart's figures would suggest, neither is it as costly a proposition as the above figures might seem to indicate. For we have not taken into account the compensation received by accident injury victims from collateral sources. The DOT study again supplies the needed figures. With compensation from life insurance omitted (since none of the no-fault plans considers life

<sup>1</sup> Department of Transportation. *Motor Vehicle Losses and Their Compensation in the United States*. Page 6, Table 2.

<sup>2</sup> Ibid.

<sup>3</sup> Insurance Information Institute. *Insurance Facts 1970*. Page 11.

insurance as an offset against uncompensated loss), those injured in all auto accidents in 1967 received or could anticipate receiving—from hospital, medical and other injury insurance, paid sick leave, workmen's compensation, social security and other current and future benefits a total of \$1.4 billion.<sup>4</sup> A comparison of 1967 net compensable bodily injury losses with total bodily injury premiums written the same year shows the following pattern:

*Losses attributable to death and injury—(DOT study)*

Medical expenses.....	\$1, 243, 000, 000
Wage losses.....	4, 239, 000, 000
Other .....	207, 000, 000
Total .....	5, 689, 000, 000
Less collateral sources.....	-1, 409, 000, 000
Net loss total.....	4, 280, 000, 000

Bodily injury liability, first-party medical payment and uninsured motorist premiums in 1967 totaled \$4,622,000,000.

Thus, in 1967 the premiums paid for insurance covering injury and death from auto accidents would have exceeded the victims' net economic losses by about \$350 million, almost enough to pay the overhead of an insurance system operating at the efficiency level achieved by the Puerto Rico Accident Compensation Administration in its first year. By contrast, the present system in the year 1967, encompassing bodily injury liability insurance and all collateral sources (including life insurance), compensated only about one-half the losses from serious and fatal injuries. In so doing, the system tended heavily to overcompensate those least seriously injured and to undercompensate those most seriously injured.<sup>5</sup>

I wish to thank the Committee for this opportunity to answer Senator Hart's question with the benefit of adequate reference sources.

Senator HART. On the property damage you have endorsed the bill which involves authorizing the Department to set standards with respect to automobile construction industry that relate to property damage as well as safety; you do endorse that?

Mr. KLEIN. We do.

Senator HART. That I believe will give promise to reducing, I think substantially, in the years ahead the property damage; at least it should have that effect.

There is another feature; I think you did mention it in your testimony, but I would like an explicit reaction to it.

We are attempting in the proposal we have filed to eliminate, lift, and nullify the restrictions against mass merchandising of auto insurance. You did endorse that explicitly in your statement?

Mr. KLEIN. Yes; we did.

Senator HART. What potential benefits to the consumer do you see in that, and are there some problems, some detriments that might be claimed if we went in that direction?

Mr. KLEIN. Well, the studies of your own staff indicate that group or mass merchandising of automobile insurance coverage would reduce the bureau rate by 15 percent. I say the bureau rate. Many people insuring with the direct writers enjoy that 15-percent reduction anyway. The direct writers, if we get into the group field, will probably realize another 15 percent.

It seems to me for group automobile insurance coverage to have any mass appeal, part of the premium has to be paid by the employer. Oth-

<sup>4</sup> Ibid.

<sup>5</sup> Department of Transportation, *Economic Consequences of Automobile Accident Injuries*. Vol. 1, Page 2.

erwise, the experience has been that there is adverse selection. The poor risks take that insurance and the good risk continues with his present coverage. So, there is that problem with it.

But my goodness, it should be available. The reason there are State laws or administrative rules against group insurance is to protect the automobile insurance agent, the seller of individual policies. That is not good social and public policy. Let's let this industry reach its maximum level of efficiency and reduce its selling costs to the lowest point it can reach.

Therefore, we support your plan and we hope that employers' contributions to their employees' group plans can be tax exempt as another of your bills would provide. Obviously, this won't benefit the person who doesn't work for a large employer, the person who works for himself. So, it isn't a universal benefit. Although, as we see it, eventually universal benefits will be in some sort of public health plan. Then, we have the ultimate group and the wisest and best kind of coverage.

Senator HART. Now, both of you speak for and work with consumers who I am sure are markedly above average in their understanding and interest in making any purchasing decisions, but even as to them I would ask you to go beyond and speak to those who are not identified as readers of *Consumers Report* and members of the federation; endorse the feature of S. 945 which requires the Department to report the pricing quality of the policies that are being marketed. Do you think that could be put in a style that would mean anything to anybody?

Mr. KLEIN. Senator, if the answer to that question weren't "Yes," there would be no State Farm Insurance Co. There would be no All-state Insurance Co. These companies became large by charging the lower price. People recognize the lower price, and they do business with those companies. The entire 90 million automobile owners in the United States don't have to be aware of the low prices in order for those 90 million people to benefit from the competition on the basis of price.

As soon as any significant element of the population responds to a price, the competitive system works and everyone benefits.

Senator HART. I am not satisfied yet that the consumer information that is provided now on vehicle performance, provided by the Department to the car buyers, I shan't say, is worth the paper it is printed on but is pretty much Greek to almost every buyer, because every buyer assumes it is Greek—I don't know which way it goes—but it doesn't mean very much, does it?

Mr. KLEIN. Of course not. In order to find out any significant number of performance features about an automobile, one has to not only jot down the data on car A but has to go out and shop for car B, C, D, and F. And then, when he finds they vary, he has to decide which set he wants in his automobile.

Consumers Union has been in this business of rating products since 1936. If we had simply said to people, "Here is a table of the comparison of various data on phonographs or washing machines or automobiles, go choose them yourselves," we would have been out of business long ago. One has to draw these together into some unified judgment about which automobile is the best.

U.C. BERKELEY LIBRARY

What you are proposing for automobile insurance isn't all that complicated. You are going to tell us what the price is. In addition, you are going to tell us which companies settled their claim most judicially and fully. Those are simple matters if they are put out simply. Even if they are not, if they are made available to organizations like ours and many other publications, we will put them in the form that the public can understand. It will be of great value to our readers.

Senator HART. Am I correct in saying that it is important also to insure the benefits or savings that result from improved design, the benefits to insurers from the improved design and from periodic inspections that really are inspections? Dissemination of the information insures, does it not, that there will not be the temptation on the part of the insurance company simply to save for itself the moneys that will be saved as a result of these things? This kind of tabulated information will reflect to the consumer the availability of that kind of saving, would it not, if it is not a fact passed on? Could it not be designed to insure that?

Mr. KLEIN. Do you mean that by the statistics the Government would gather, the statistics that the companies would have to submit, one could tell whether company A was returning 70 cents or 80 cents on the dollar, is that the intention of your legislation? I take it that it is.

Senator HART. That's right.

Mr. KLEIN. Certainly that would help us recognize which company was doing the most for our dollar. It wouldn't necessarily tell us everything we need to know, though; company A might have a very efficient return of benefits and a low premium, but it might also be cheating on claims, underpaying its claims. We couldn't tell that just from the information that you are talking about now.

Senator HART. Mr. Sutcliffe, are there some questions you desire to raise that I have not?

Mr. SUTCLIFFE. Mr. Klein, one question related to your testimony advocating that automobile insurance remain secondary to other insurance coverages until such time at least that the cost of providing automobile insurance is commensurate with the cost of providing other insurance.

What does this do to your argument that we should attempt to reduce the number of price slots in our providing of insurance? In other words, if an insurance company had to put a price on a person's insurance and that price had to be calculated on the basis of what other insurance coverages were available, would this not increase measurably the number of slots that an insurance company would have to figure out?

If it would not, would any arbitrary averaging eliminate the potential advantages of making automobile insurance secondary to primary insurance?

Mr. KLEIN. Of course, insofar as the collateral sources are concerned, the other coverages that the consumer carries, it would be added and complicate the rate structure. There is no question about that and there is no way to get around it.

Obviously, if a man bought disability insurance because he knows he may be disabled in any number of ways, not only in an automobile accident, that man is paying that money himself, and he obviously

should not have to pay it again in his auto insurance. There is no question we will be creating additional slots. I don't think there will be that many additional slots. I think that can be manageable.

On the other hand, we can eliminate some of the rating classifications we have now. For one thing, every company I would hope would use the same geographic scheme. As matters stand, some companies' territories are not the same as others.

In addition, the attempt to define the difference in risk between a 25-year-old unmarried youth, a 26-year-old married youth, a 30-year-old female, and somebody who has a B-plus average in college, I think a lot of that can be done away with and we can eliminate some of the other 7 million slots.

It doesn't matter when you come down to it. If somehow you can legislate as we suggest so that there is a basic price that each company offered to the mythical average motorist, then we can go about seeing which company has the best basic price. If we know that no matter which company we go to our surcharge or discount will be the same percentage of that price our shopping problems are over.

Senator HART. What you are recommending then is a system of standardized deductibles as to other insured's coverage benefits in order to solve practically the problem of determining the number of slots.

Mr. KLEIN. As I understand it, it is not a matter of deductibles. If a customer has a medical plan that covers himself and his family, wife and children, and it covers him for almost everything he can anticipate in the way of injury expenses, he will obviously pay a very small medical premium to his automobile insurer through this system. I think the major difference would be in coverage for loss of wages.

Some people have good sick leave programs. You would have a considerable reduction in premium to measure against the bad side. If you happen to live in the city that would increase the premium by a certain percentage, but offsetting that might be a heavy coverage for your medical losses.

Senator HART. Perhaps the word deductible was not well chosen. The concept, however, was to suggest the possibility that the mandatory coverage in the auto policy could be met through other insurance and, therefore, you would provide a deductible within the mandatory coverages that your other insurance would fit into.

It is an unusual use of the word deductible but I think one that is descriptive of the process whereby you might coordinate insurance coverages and benefits to assure that everyone had the mandatory coverages but there was a freedom in the marketplace to choose other insurance sources to provide coverages at the least possible cost to the consumer.

Does that make sense? Is that logical, to approach it from that standpoint?

Mr. KLEIN. Yes, I think so. His Blue Cross major medical coverage might even be designated major automobile insurance, and the premium for that part of your coverage would simply be your medical premium.

Mr. SUTCLIFFE. Let me ask several more questions related to S. 976.

You have said that Consumers Union supports efforts to put property damage coverages on a first-party basis, is that correct? Does one

of your 14 points include property damage coverage on a first-party basis?

Mr. KLEIN. You are talking about property other than the automobile?

Mr. SUTCLIFFE. No; I am talking about the automobile itself.

Mr. KLEIN. Our proposal is that of the Keeton-O'Connell plan as recently modified. It gives the insured person three choices. He may buy first-party collision insurance with as much deductible as he chooses, or he may buy presently nonexistent coverage under which he would receive compensation for damage to his car from his own automobile insurer if another driver were at fault; that is, many people don't buy collision insurance perhaps because their automobile is old or perhaps because they can afford to be self-insured, and that is reasonable.

But if somebody else comes along and, totally by his own negligence, demolishes your car and you have no claim at all, that may seem unfair.

In that case, the plan says you would buy only collision insurance that paid you if somebody else was at fault. The third option is no coverage at all.

Mr. SUTCLIFFE. Your plan then would deny the liability action for property damage claims?

Mr. KLEIN. It would.

Mr. SUTCLIFFE. And you would meet that then in one of three ways, as you have outlined?

Mr. KLEIN. Yes.

Mr. SUTCLIFFE. Do you believe that a denial of the tort liability action for property damage as to the vehicle would have salutary effects upon the design of vehicles and the construction of vehicles?

Mr. KLEIN. Yes.

Mr. SUTCLIFFE. You would subscribe then to the Department of Transportation's statement that this would improve the property loss reduction capability of motor vehicles?

Mr. KLEIN. Yes, for the very obvious reason that the insurer would know the car that he is insuring.

Mr. SUTCLIFFE. And that would be reflected in reduced premiums for those vehicles that could sustain impacts without resulting property damage?

Mr. KLEIN. Yes, or indeed would prevent personal injury better than other vehicles.

Mr. SUTCLIFFE. So, you would subscribe to the injury severity index rating in S. 976 as well as the property loss reduction rating feature of the bill?

Mr. KLEIN. Yes, we do.

Mr. SUTCLIFFE. Do you support the diagnostic inspection requirements in S. 976?

Mr. KLEIN. I will have to beg off on that question because I haven't given it that much thought. I have read the legislation hurriedly, and I see what you are trying to accomplish, but I am not quite sure that I am competent to say whether there is such a thing as a diagnostic clinic that will do that accurately.

Mr. SUTCLIFFE. Perhaps after you have had a chance to review the hearing record of this committee, you could file a supplemental statement with your position on that legislation.

Mr. KLEIN. All right.

Mr. SUTCLIFFE. Do you have any views on the uniform titling requirements in S. 976?

Mr. KLEIN. Yes. That is an essential reform for the motorist. I think you make an excellent case for that. It should be done.

Mr. SUTCLIFFE. Thank you, Senator.

Senator HART. Do you disagree with a single word, Mrs. Angevine?

Mrs. ANGEVINE. No, sir; we support his statement.

Senator HART. Thank you both for helping us in this hearing.

Mr. KLEIN. It has been my privilege.

Mrs. ANGEVINE. Thank you, Senator.

(The article referred to earlier follows:)

U.C. BERKELEY LIBRARY

[Reprinted From *Consumer Reports*, April 17, 1971]

## INSURANCE: THE ROAD TO REFORM

**A**utomobile insurance is by now probably the most thoroughly studied of all consumer problems. The verdict of investigators from the insurance industry, government, the legal profession and consumer groups is unanimous. Something must be done to make insurance do a better job of paying the cost of highway injuries. Something must be done to stop the runaway price of insurance. Something must be done to make sure the right kind of insurance is available to every car owner, and at a fair price.

The time has come for consumers to unite in a crusade for auto-insurance reform. Everyone else is getting into the act. The three major auto-insurance industry trade groups are sponsoring plans. Even the American Trial Lawyers Association, traditional foe of any change that might detract from the fees its members earn by representing accident victims, has drafted legislation in the name of reform. Actually, it's a last-ditch effort to patch up the present liability-insurance system.

Reform is already under way in Puerto Rico, where a government-run plan insures every accident victim for his full medical expenses and a modest amount of wages while he's disabled. Massachusetts inaugurated this year a compulsory medical and wage-loss policy and eliminated most liability claims for less than \$2000 of injury expenses.

Many states are now debating reforms based on three pioneering plans: The Keeton-O'Connell Plan, the American Insurance Association Plan (developed by one group of insurance companies), and the New York State Plan. All three would de-emphasize the role played by liability insurance, and the AIA Plan would do away with it entirely. Legislation patterned on the AIA Plan has a good chance of adoption this year in Minnesota.

Meanwhile, Senator Philip A. Hart has introduced in Congress a bill that would require every state to adopt a uniform kind of automobile insurance embodying principal features of the three preceding plans and some additional features contributed by the Senator himself. The Hart Plan contains much that consumers can support, although some important details remain to be worked out. Still awaited (as this issue goes to press) is the recommendation for insur-

ance reform being developed by the Secretary of Transportation as the product of a study ordered by Congress.

There is no single, perfect plan. Some students of the problem even doubt that the system of privately sold insurance can be salvaged. They look toward government insurance. Certainly, the problem is made less critical by state-administered health-insurance and medical-care plans in those countries that have them. Then, at least, there is never a question of availability of medical care for all victims regardless of ability to pay and regardless of whether they are victims of automobile accidents, other accidents or illness.

CU believes that this country's automobile insurance should be revamped with a view to the universal health insurance that appears to be somewhere on the horizon. With that in mind, we present on page 225 a 14-point set of objectives that we think are required in a reform designed in the best interests of consumers as policyholders and as claimants.

To place those objectives in an understandable framework, let's first take a look at what's gone wrong with the present system.

At issue is liability insurance and the legal doctrine that makes it necessary. The law says a motorist whose bad driving kills or injures someone or damages his property must pay for the damage. Bad driving, the law says, includes not only recklessness but also carelessness. Almost everybody makes mistakes behind the wheel, and sometimes mistakes cause accidents costing many thousands of dollars in medical bills and lost wages. Liability insurance is designed to protect the financial assets of car owners from those possibly overwhelming obligations to people they may injure. The insurance company pays what its policyholder would otherwise have to pay his victims.

Society invents laws for a purpose. One idea behind liability law is to deter people from carelessly hurting other people. Automobile insurance, though, relieves individual motorists of heavy financial penalty by spreading the risk among all insured motorists. Little or no financial risk means little or no deterrent to carelessness. But the liability

## AUTO INSURANCE

continued

doctrine of deterrence wasn't very sound anyway. The instinct for survival is doubtless a far stronger incentive to safe driving.

The main social purpose of liability law is to see that innocent victims are paid their losses. Hence, every state either compels or puts heavy pressure on car owners to buy automobile insurance. One of the intolerable things about it is that the system works out unfairly. People with minor losses tend to be overpaid, while people with severe losses are likely to be underpaid. Here are some things a Department of Transportation study found out about seriously injured traffic victims who collected on liability-insurance claims:

People who suffered less than \$500 injury costs collected an average of four times their losses.

People who suffered from \$10,000 to \$25,000 injury costs collected an average of half their losses.

People who suffered more than \$25,000 injury costs collected an average of only about 15 per cent of their losses.

The study counted only the kinds of costs that took money from the victims' pockets; it made no estimate of the costs of pain and suffering. Insurance payments were measured after subtracting lawyers' fees, which cost victims an average of 25 per cent of their benefits.

Only about 45 per cent of seriously injured people in auto accidents collect any money from liability insurance. There is obviously no such right of payment for victims of one-car accidents or for those whose careless driving led to their

own injury. Most state laws call for no liability payment if both drivers made mistakes. There is no auto-insurance liability payment, either, where no one is to blame for the accident or where a defective car or a defective highway is to blame. There is many a crash that embroils its victims in deadlocked argument over who was to blame.

Other kinds of insurance help to fill the gap in accident expenses left when there is no liability claim or when liability insurance underpays. But the Department of Transportation study found again that those most severely hurt are often left in financial straits. When a highway accident takes more than \$10,000 from the victim's pocket, only three victims in 10 recover more than half their losses—and that's counting payments from sick-leave plans, social security, collision coverage and so forth.

### Rising premiums

The steeply rising cost of automobile insurance makes the poor delivery of its benefits all the more deplorable. In the 10 years to 1970, Senator Hart has noted, premiums went up faster than even the soaring cost of car repairs and medical care.

Automobile liability insurance fails to put the money where it's most needed. About 56 cents of every dollar spent on liability insurance pays for insurance-company expenses and lawyers' fees. Half the remaining 44 cents pays claims for pain and suffering, as opposed to actual out-of-pocket expenses. An additional 8 cents pays for expenses already covered by other kinds of insurance. That leaves about 14 cents to pay for medical costs and lost wages that otherwise would not be recovered by the victim.

In short, what has come to be called the fault system

## "We regret to inform you that your policy . . ."

The problem of buying and keeping automobile insurance may once have burdened only the dangerous driver. Nowadays, cancellation notices are no respecters of a good driving record or a high standing in one's community. *The New York Times* reports, "Insurance agents who have been in business for years are complaining that their contracts with the companies are being canceled for 'arbitrary' reasons. The cancellations often mean that consumers have to pay more money for less coverage."

The epidemic of cancellations is nationwide. Here is a sampling of complaints.

Dear CU: I would like to inform you of a letter I recently received from the Travelers Indemnity Co., Roscoe office. It states that my agent is no longer placing his business with them, so they will not be renewing my automobile policy after February 18, 1971. My wife and I have a clean driving record with this company. We have no driving offenses marked against us. We have no other

drivers at home. We reside in a quiet place and park off the street. Now I notice that the Travelers have six other agents near our area, the nearest a five-minute drive. . . . I believe that a company that refuses to renew a policy for a driver with a clean record should pay a penalty to be shared by driver and state.

SALEM, VA.

W.H.

Dear CU: Just when I felt I had good insurance after reading your Ratings on insurance companies, I got a notice that Safeco will not renew my automobile insurance next month. I presented a collision claim in November when I inadvertently backed into a stone wall in an unfamiliar driveway, and they paid the claim. One claim and I understand from my agent, they cut you off. Hope you can convey this information so that others who have Safeco coverage will not have accidents.

YACHTS, ORE.

K.H.S.

Dear CU: I feel that you will be interested in the following correspondence with Sentry Insurance Co. after it canceled our insurance without any reason.

"The facts are as follows: During the seven

years that I have carried a Sentry policy there have been two minor claims totaling less than \$100, one about five years ago and one about three years ago. In the some 24 years that my wife and I have been driving, and the five years that we have included youthful drivers under our policy, no member of the family has ever received a traffic citation for any reason, and no driver has ever been involved in an accident of major consequence.

"With regard to my son, whom you list as a youthful, principal driver, he drives less than 10 per cent of the total mileage driven in the family, although he is the principal driver of our third car. I cannot understand why he should be put in a class that penalizes him and the family. He was an honor student in high school and is one of some 20 freshmen at his college enrolled in the honors program and maintaining a high academic standing. In high school he won the 'Outstanding Athlete' award. He was selected as representative to Badger Boys State. Upon enrolling in college, he was awarded a Lutheran Brotherhood Youth Leadership Award and Scholarship (a national award).

LAKE CENEVA, WIS.

R.S.

U.C. BERKELEY LIBRARY

of auto insurance has broken down; yet law and public policy force almost all car owners to buy fault insurance from private companies. Besides misdirecting consumer expenditures, the fault system puts a heavy and costly burden on the time and facilities of the civil courts. Those who must pursue their claims in court sometimes wait as long as five years for a verdict, and the average claim takes 16 months to settle. The delay and uncertainty of liability-insurance benefits throws part of the medical cost of auto accidents on

the shoulders of the general public through higher taxes and higher hospital bills.

Worst off are the victims. The Department of Transportation study translated hardship into numbers. When serious injury occurs on the highway, 5 per cent of the stricken households have to send other members of the family out to work; 3 per cent have to move to cheaper housing; 20 per cent have to take money from savings or the sale of property; 12 per cent miss debt payments.

## The goals of auto-insurance reform

*In CU's view, the following 14 objectives should be met by any reform plan.*

**1. MEDICAL CARE.** All people injured in car accidents should receive, at first mainly from private insurance but soon, we hope, from a Federal health plan, the expenses of complete medical care, including rehabilitation. Automobile medical-insurance benefits, like other medical insurance, should be paid to all who are hurt, regardless of who caused the accident, including drunk drivers and drugged drivers. Such people must be kept from driving. But depriving them of medical care won't keep them off the road; it will only visit hardships upon their families.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—No, it limits no-fault benefits to \$10,000 per person.

*American Insurance Association Plan*—Yes.

*New York State Plan*—Yes.

*Hart Plan*—Yes.

**2. WAGE REPLACEMENT.** All disabled victims who cannot work should receive the equivalent of their take-home pay, their earning capacity if they are students or unemployed, or their services to their families—all such payments to be limited to an amount adequate to sustain a decent standard of living in their community. No one should receive more money than he was taking home before being injured, however. Social security pays some wage loss already to disabled persons. It should be expanded to do the full job.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—No, it limits wage replacement to \$750 per month and counts that as part of the \$10,000 maximum no-fault benefits.

*American Insurance Association Plan*—No, it limits wage replacement to \$750 per month but does pay it indefinitely.

*New York State Plan*—Yes, it goes beyond the objective by paying unlimited wage losses.

*Hart Plan*—No, it limits wage replacement to a total of \$30,000 but does provide up to \$1000 per month, enough for an adequate living standard at present price levels.

**3. PERIODIC PAYMENT.** Auto-accident-insurance benefits should be paid to victims month by month as expenses and wage losses occur.

*Do the major reform plans meet this objective? Yes.*

**4. OTHER INSURANCE.** Auto insurance should take care of paying only what less-costly insurance plans do not cover. Most plans, including social security, group hospital and medical policies, Blue Cross, and individual health policies

now return a far larger percentage of the premium to the policyholders than auto insurance does.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—Partly. Though it does away with duplicate payments for the same loss, it might leave automobile insurance as the primary source of benefits, at least until there is a government health-insurance system.

*American Insurance Association Plan*—No. Same as Keeton-O'Connell.

*New York State Plan*—Yes.

*Hart Plan*—Yes.

**5. GROUP AUTO POLICIES.** State laws and administrative rules obstructing the sale of group automobile insurance should be overruled by Federal law. Many states have been persuaded by auto-insurance agents to hamper group sales and such mass-marketing devices as insurance for a company's employees on the payroll-deduction plan.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—No. But the plan itself would encourage group selling.

*American Insurance Association Plan*—No. Same as Keeton-O'Connell.

*New York State Plan*—Yes, in that New York has no law against group insurance.

*Hart Plan*—Yes.

**6. CANCELLATION.** Auto-insurance policies must be non-cancelable, guaranteed renewable, and available in the open market to all eligible consumers. Everyone licensed to drive or able to register a car should be eligible as long as he pays the premiums. The situation now is that 14 per cent of motorists have had their insurance canceled, and when one company cancels, others tend not to accept you. From 8 to 10 per cent of car owners must now buy through assigned-risk plans because no company will deal with them voluntarily; yet an eight-state analysis of assigned-risk policyholders found that 53 per cent of them had had no accidents or convictions for traffic violations. The price of being an assigned risk is very high—sometimes double the standard rate. In most states the most insurance you can buy as an assigned risk is the minimum liability coverage required by the state.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—No.

*American Insurance Association Plan*—No.

*New York State Plan*—No.

*Hart Plan*—Yes.

## AUTO INSURANCE continued

**7. PAIN AND SUFFERING.** The number of claims for pain and suffering should be greatly curtailed, leaving only the most serious ones. Most such claims today are paid to victims of minor injuries rather than to the seriously hurt. The average person with medical expenses of less than \$100 and with a lawyer to press his claim receives six times his loss. With the elimination of petty claims for pain and suffering, the insurance system might be able to pay, in addition to out-of-pocket losses, at least some compensation to seriously disfigured and permanently disabled victims. Preferably, every such victim should be paid. If that makes insurance too costly, it may be necessary to preserve his right to sue a negligent driver.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—Yes, by means of a \$5000-deductible liability claim against a faulty driver.

*American Insurance Association Plan*—No.

*New York State Plan*—No.

*Hart Plan*—Yes, by means of a liability claim against a faulty driver for permanent disability and disfigurement.

**8. PROPERTY DAMAGE.** Damage done by automobiles to property other than automobiles should be repaired with money from the car-owner's automobile insurance even if the accident was not his fault.

*Do the major reform plans meet this objective?*

Yes, except that the Hart Plan makes such coverage optional.

**9. COMPULSORY COVERAGE.** Every car owner should have to carry the basic no-fault automobile insurance. Companies could offer all kinds of optional extra coverages: higher benefits for pain and suffering, higher wage benefits, etc.

*Do the major reform plans meet this objective?* Yes.

**10. AUTOMOBILE DAMAGE.** The consumer should have three choices of automobile damage insurance: 1) no collision insurance, 2) today's type of collision insurance, which pays for damage regardless of fault, 3) insurance that pays damage done to his car if the driver of another car caused the accident. The third choice should be offered in fairness to owners of cars with too little value to merit full collision insurance. Collision premium rates should be scaled, as some companies scale them now, to encourage construction of damage-resistant cars. Fire, theft and comprehensive insurance should be optional, as now.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—Yes, it originated the three-choice idea.

*American Insurance Association Plan*—No. It offers full collision insurance or nothing.

*New York State Plan*—No. Same as AIA.

*Hart Plan*—No. Same as AIA. But this is the only plan that would require premiums based on damageability of the car.

**11. PREMIUM RATES.** They must be held down and, if possible, reduced. A system that pays benefits without attempting to establish blame can redirect to premium savings or improved benefits at least 25 per cent of the cost of today's liability insurance. Elimination of automobile-insurance

payments for losses already covered by cheaper insurance will cut the premium further. Elimination of pain-and-suffering claims for minor injuries will cut costs even more.

*Do the major reform plans meet this objective?* Yes, all claim to. But there is disagreement on the savings. The Keeton-O'Connell Plan puts a \$10,000 limit on no-fault medical and wage benefits because its actuary could not otherwise foresee reduced premiums.

**12. PRICE COMPARISONS.** The driver-rating system should be standardized. A person's age, sex, where he lives, the car he drives, and how much he uses his car do appear to have a real bearing on his chances of having an accident. With no-fault insurance, companies should also design their rates around the size of the family, its other insurance and its income—in other words, those factors that would determine compensation in the event of an injury-causing accident. The important thing is for each company to use the same rating standards, including identical geographic rate zones. Companies should compete on the basic price from which all rates would be figured by percentage increases or decreases. Shoppers would then find it relatively easy to compare prices.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—No.

*American Insurance Association Plan*—No.

*New York State Plan*—No.

*Hart Plan*—Yes, it originated the idea.

**13. CLAIMS SERVICE.** Insurance companies should report regularly to a Government agency their claims-paying practices, and the agency should publish data indicating how well each company satisfies its claims. CU's recent survey of claims experiences showed significant differences in the way companies handled their claims (CONSUMER REPORTS, June 1970). Full knowledge of the quality of a company's service is essential to the consumer's rational choice of a company.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—No.

*American Insurance Association Plan*—No.

*New York State Plan*—No.

*Hart Plan*—Yes, it originated the idea.

**14. INDUSTRY REGULATION.** Automobile insurance should be regulated by a Federal agency instead of by each individual state. It would be appropriate for the motoring public to finance the agency with a tax on insurance policies. Present law exempting insurance companies from the antitrust laws should be repealed. Prices should be regulated by the market under surveillance of the new Federal agency. Few states can hire the professional staffs needed to cope with their regulatory obligations. A single Federal agency could afford highly competent attorneys, accountants and actuaries and could use their services efficiently in the public interest. The American population is mobile. It travels on interstate highways, and it changes residence frequently from state to state. Americans need uniform motor-vehicle laws and uniform automobile insurance.

*Do the major reform plans meet this objective?*

*Keeton-O'Connell Plan*—No.

*American Insurance Association Plan*—Does not specify.

*New York State Plan*—No.

*Hart Plan*—No. Insurance regulation would remain with the states in consultation with a Federal administrator.

U.C. BERKELEY LIBRARY

Senator HART. Before we hear from our next witnesses, I would like to insert in the record a telegram to Senator Magnuson from Miss Betty Furness, chairman of the New York State Consumer Protection Board:

Senator WARREN MAGNUSON,  
U.S. Senate,  
Washington, D.C.:

As hearings begin on your proposed no-fault automobile insurance bill, I want to add my voice to the many others who will be speaking out in favor of it. Our present system denies compensation to one-quarter of all persons injured in automobile accidents. Our present system allows insurance companies and agents, lawyers and claims investigators to take up to 56 cents on every personal injury liability insurance premium dollar. The fault system encourages dishonesty and overreaching by both claimants and insurers. The system abounds with unwarranted policy cancellations. I strongly favor the no-fault auto insurance concept. I support a system which will lower insurance premiums while compensating all auto accident victims, except deliberate lawbreakers. I am confident all the testimony given at your hearings will clearly demonstrate that the time for no-fault auto insurance is long overdue.

BETTY FURNESS,  
*Chairman, New York State Consumer Protection Board.*

Apologizing first to the gentlemen who will now come forward, when we talk about consumers here, we talk generally about the fellow who makes a decision to buy a car perhaps once in 4 years, and if Detroit is particularly persuasive once in 2 or 3 years.

We welcome this afternoon men who buy in quantity. I would ask them all to come up together: Mr. Frank J. Max, vice president of Avis; Mr. Robert Smalley, president and chief executive officer of Hertz; Mr. Winston V. Morrow, president and chief executive officer of Avis, and Mr. Gordon Bowker, vice president of Ryder Truck rental.

Gentlemen, I am sorry that you have had to spend a whole day here. I think the record will be benefited by having your opinion on this.

**STATEMENT OF FRANK J. MAX, JR., VICE PRESIDENT, AVIS RENT-A-CAR SYSTEM, INC., PRESIDENT OF CATRALA; ACCOMPANIED BY JOHN MURPHY, VICE PRESIDENT OF AVIS RENT-A-CAR SYSTEM, INC., ON BEHALF OF WINSTON V. MORROW, JR., CHAIRMAN OF THE BOARD, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, AVIS RENT-A-CAR SYSTEM, INC.; SOL M. EDIDIN, VICE PRESIDENT, SECRETARY, AND GENERAL COUNSEL OF HERTZ CORP., ON BEHALF OF ROBERT A. SMALLEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, HERTZ CORP.; AND GORDON BOWKER, VICE PRESIDENT, RYDER TRUCK RENTAL, INC.**

Mr. Max. Thank you, Senator.

I am Frank Max, vice president of Avis Rent-A-Car System, Inc., and president of CATRALA, which is the Car and Truck Renting and Leasing Association.

I am happy to be with, on my left, Mr. John Murphy who is a vice president of Avis Rent-A-Car System and its director of insurance and safety who will read Mr. Morrow's statement, the president of Avis; and on my right is Mr. Sol Edidin, vice president, secretary, and general counsel of the Hertz Corp. who will read Mr. Smalley's state-

ment, who is the president; and beyond Mr. Edidin is Mr. Gordon Bowker, vice president of the Ryder System, who will present a statement of his own.

CATRALA is the association of those firms and persons in the United States, the District, Puerto Rico, and Canada who are engaged in the rental and lease of cars and trucks. We have in excess of 1,500 members with the vast majority being small businessmen.

My purpose today is to convey to you the support of the board of directors and membership of CATRALA in your efforts to bring badly needed reform to our system of insurance and particularly to add our backing for the principle of a no-fault insurance system as contained in S. 945 and related bills.

Insurance is the number one problem facing our industry today. The problem is of such magnitude that it is literally forcing some companies out of business. I will not take the time of the committee to list the evils of the current so-called fault system. You know them better than I. Instead, I would like to address myself to the need for uniformity throughout the States and for immediate action.

The cost of insurance—if it can be obtained at all—has increased in recent years to the point that for many car and truck renters the expense of insurance exceeds that of vehicle or people costs. We have not sat idly by complaining. We have tried to live and work within the system by careful selection of renters and watching costs. But this is no longer feasible. Some change in the very basis of insurance is needed.

At our recent annual meeting we devoted a substantial part of our program to the problems of insurance and the membership is now totally in support of a no-fault system. In my opinion, before our meeting a good many of us were opposed to the no-fault proposals believing, as apparently others still do today, that we must make people responsible for their actions.

We also assumed that the present fault system does so. But, after an explanation by Professor Jeffrey O'Connell and other experts, our industry, understanding it for really the first time, was overwhelming in their support for the no-fault system. I suggest that an informed public will react similarly.

We think the no-fault principle is the best solution and should be adopted to the maximum extent possible. Because of this we oppose the provision in paragraph 7(A) of section (5) that would require the owner of a truck to contribute to the costs incurred by the occupants of an automobile. This is a major exception to the no-fault principle and would create inefficiencies and inequities.

On behalf of the board and the members I would like to record our opposition to any such provision. We are pleased to note H.R. 7514 introduced by Congressman Moss on April 20 omits such a feature and we support that approach and that bill wholeheartedly.

The need for uniformity throughout the United States for people in our business is so obvious that I will not belabor the point. We are engaged in interstate commerce and must have a consistent and uniform system under which to operate.

We sell mobility. Our vehicles are constantly moving throughout all of the States. I cannot describe the confusion that would result if some

States had the old tort system, others some form of no-fault and still other States something in between. It would be a disaster.

We support a uniform no-fault system, and I emphasize uniformity inasmuch as the no-fault plans introduced in several States vary all over the lot.

We also need action now. Each day we continue to perpetuate the inequities of the tort system causes more hardship and suffering. We see no reason to delay reform.

We are here because we are major consumers of insurance and we do not anticipate that a no-fault system will save us money. On the contrary, it may initially cost more, but the inherent efficiencies and advantages of such a system must eventually benefit us as it does all other automobile owners.

With the improvements and amendments suggested by my associates, I would like you to have our complete support and we stand ready to do whatever is necessary to assist in your efforts.

Thank you.

Senator HART. Good. Let's hear what those suggestions may be in addition to that business about trucks, the heavy vehicle.

You commented on the requirement that is in the bill that we filed that the truck owner contribute to the cost incurred by the occupant of an automobile, and you say no to that. Perhaps there are other specifics that you wish to make.

Mr. MAX. Yes. As a matter of fact, other gentlemen will cover this point in their statement also, Senator.

May I ask Mr. Murphy to proceed with his statement?

Senator HART. As you would like.

Mr. MURPHY. My name is John J. Murphy, vice president, insurance and safety, of Avis Rent-A-Car System, Inc., and I will read a statement of Winston V. Morrow, Jr., chairman of the board, president, and chief executive officer of Avis Rent-A-Car system.

Mr. Morrow has been out of the country for the last week or 10 days and cannot be here. However, he would like to be. His statement is as follows:

For many years during my career with Avis I have been compelled to watch as my company poured millions of dollars into the existing system of vehicle liability insurance.

While always somewhat uneasy over these expenditures it was not until the findings of the Department of Transportation were made public that I was able to focus on the thought that our millions might be going to a system of reparation that is, as stated in a DOT report, "inequitable, inadequate and insufficient, and unresponsive to existing social, economic and technical conditions."

In articles commenting upon the DOT reports many statements were made which tend to verify the above conclusions. Some very troublesome and provocative statistics that come to mind, albeit based upon fairly small samples, are that 55 percent of all severely injured people collect nothing from automobile liability insurance while those accident victims suffering less than \$500 in economic loss collect 400 percent of such loss.

While it has never been, and should not be, the goal of any automobile accident reparations system to provide full compensation for all economic loss suffered by victims of auto accidents, it does occur to me that the millions that are now being spent could be put to better use.

It is against this background that my company has determined that the basic no-fault concept, calling for prompt payment of out-of-pocket expenses and lost wages to auto accident victims, regardless of fault, through mandatory first party accident insurance, is on balance in the interest of the public and is in any event clearly to be preferred over the present system.

I am aware, however, that a growing number of States are considering various kinds of no-fault legislation, some retaining the tort system in part and some not, all with different limits for economic loss, and with many other variations.

We are most concerned and apprehensive, therefore, that, due to this appalling lack of uniformity of definition and standards, a state of no-fault anarchy would exist if the several States were to be free to enact legislation currently under consideration.

The obvious solution is Federal legislation which will create a uniform system of insurance supervised by the States but subject to the requirements of Federal law and regulations.

Accordingly, I am pleased to express my support for the principle of Federal no-fault insurance as set forth in S. 945, in the hope and belief that such legislation will correct many of the abuses, delays, and inequities inherent in the present tort insurance arrangements while at the same time eliminating this possibility of no-fault anarchy.

As presently written, however, S. 945 contains two principal defects which will need correction before the bill can fully achieve its objectives and in order that new abuses of equal magnitude are not substituted for the existing ones.

First is the provision for payment in full of reasonable medical, rehabilitative, and other expenses without further definition, limitation, or standard.

There appears to be no incentive to keep expenses of this kind within bounds and we need only to look to our brief experience with medicare and medicaid to see that the absence of any finite limits could cause this plan to be prohibitively expensive.

While the bill requires such expenses to be appropriate and reasonable, these standards could be very difficult to apply in practice, especially in view of the provision for imposing a 2-percent-interest charge if payment is not made by the insurer within 30 days.

In this connection it would certainly seem appropriate to look to the workmen's compensation systems, reinforced by clearly understandable standards, that have been successful over a period of 55 years, for a method of calculation which could be utilized in S. 945.

The second fault in S. 945 is the requirement contained in section 5(7) that larger vehicles be responsible for at least a percentage of each loss in every accident.

These provisions deviate from the no-fault concept by imposing absolute liability on certain types of vehicles for damage to others, and would thus substitute a new abuse for an old one.

Moreover, such provisions can hardly be supported in a bill which retains, as does S. 945, the tort system for so-called catastrophic harm.

I note that in H.R. 7514, the newly revised House version of a plan similar to S. 945, this section no longer appears and I would urge the committee to make a similar deletion from S. 945.

I applaud the framers of S. 945 for producing a firm proposal which, with the changes referred to above, can be the beginning of a new era in changing our institutions to better serve the public interest.

Mr. MAX. The next presentation will be by Mr. Edidin on behalf of the Hertz Corp. and its president, Mr. Smalley.

Mr. EDIDIN. Senator Hart, Mr. Smalley, the president of the Hertz Corp., is unavoidably detained in New York. I know he regrets that he cannot be here.

I have delivered to the clerk a statement of his on behalf of Hertz Corp. which I hope will be accepted in the record of this committee. Rather than read that statement I would like to make a few comments with respect to the materials contained in it.

Senator HARR. The statement will be printed in full.

Mr. EDIDIN. Hertz favors the principle of no-fault insurance which is set out in the bill before the committee. We do so for one basic reason: The public who rents our cars are entitled to this protection. No-fault is in their best interest and to coin a phrase, "What is good for them is good for us."

There are some questions and problems raised by the no-fault system and by particular pieces of legislation, including S. 945. Many of these

are mentioned in the statement which is submitted to the committee. But I am convinced that the questions and the problems are far outweighed by no-fault potential benefits.

The statement submitted by Mr. Smalley makes several basic points. First, in the application of the no-fault principle, no distinction should be made, based on the size of the vehicle or the use to which it is put.

Second, in the application of the no-fault principle, some consideration should be given to the development of standards to prevent excessive and unwarranted claims.

Third, the no-fault principle is based on the assumption that first party insurance rather than legally determined fault is the basis on which compensation will be paid. Such an assumption, it seems to us, implies a governmental obligation to guarantee that persons using vehicles will be covered.

We suggest in view of the dismal results of relating insurance to vehicle ownership that appropriate arrangements be made to require such insurance as a precondition to drivers' licenses.

All of these are covered in greater detail in the statement. I will be happy to answer any questions with respect to it.

Thank you, Mr. Chairman.

Would you like us to continue with the balance of the presentation?

Senator HART. Thank you. Yes.

Mr. MAX. Mr. Bowker will make our last statement, Senator.

Mr. BOWKER. I am group vice president of Ryder Truck Rental, whose primary business is full service truck leasing. Ryder has at the present time 37,000-plus vehicles in use. I am also a member of the board of directors of Central, which is the national organization of car-truck rental and leasing companies.

The following comments are being made on behalf of Ryder. Ryder spends over \$10 million a year to support its insurance program. Much of this cost comes about from having to defend our position in accident claims. One of our principal concerns is that only a small portion of that cost reaches the injured accident victim.

I am here today to state that we totally support the no-fault concept in principle. Knowing that several State legislatures are actively considering State no-fault insurance proposals distresses us. We honestly feel that the logical approach to such legislation should be through uniformity throughout the United States with Federal legislation that would be adopted by the individual States. We totally support uniform legislation throughout the United States and encourage the adoption of Federal legislation to assure that end.

We vigorously oppose the adoption of any bill, whether at State or Federal level, which would discriminate and apply different treatment to vehicles which are "larger than any ordinary passenger automobile." Certainly, it should be recognized that the ultimate consumer of any product bears the transportation cost of that product.

Thus, it is a logical conclusion that any discriminatory cost to the transportation industry would ultimately be borne by the consumer of the goods that have been transported. The mere ability of the commercial operator to pay should not, therefore, be considered. It is our understanding that the no-fault concept has as one of its major objectives the equitable distribution of accident claims costs. We do not understand the equity of making a commercial vehicle responsible for more than the claims cost of that vehicle.

The various workmen's compensation laws have proven over the years that it is entirely possible to schedule medical benefits and to apply certain maximums with reference to those medical benefits. An unlimited medical benefit, whether under workmen's compensation, medicare or no-fault, leaves an open end to ultimate costs which are and would be extremely difficult to predict.

We, therefore, recommend for your consideration an inclusion of some form of medical maximum limitations utilizing the schedule of benefits approach. In addition, we totally support the concept of no duplicate payments for medical expenses and loss of wages and feel that the no-fault insurance bill should include a provision to provide that payment would be in excess of other applicable insured payments.

Thank you for allowing me to be present today and present these views on behalf of Ryder and Catrala. We congratulate this committee for pursuing such a vitally important social issue.

Senator HART. Thank you, each of you, for giving us your views.

I was struck by, I think, it was Mr. Max' opening comment that your association, until it got into this subject, had the traditional feeling that we have lived with this system, maybe it isn't perfect, but no-fault must be worse, and then when you do get into the chapter and verse—am I paraphrasing it correctly—overwhelmingly your association now supports the concept of a national no-fault system with several modifications that you have indicated—the truck, heavier vehicles; some ceiling on medical cost?

Mr. MAX. That is correct, Senator.

We had our national meeting in February, in Florida, at which approximately 500 of our members attended, and we had included in that program a seminar that was conducted by Professor O'Connell, and it turned out to be the most dynamic portion of our entire 3-day program.

As a matter of fact, we held Professor O'Connell over for another day, and he met with smaller groups to discuss this subject, and there is no doubt in our minds and our board of directors' that this is so.

I put in my statement it was an education for many of us to have the opportunity for exposure to Professor O'Connell and to explore this entire concept.

Some of us, of course, had been closer to it for a longer period of time like Mr. Murphy, on my left here, who is working in this area on a daily basis.

Senator HART. I do find that section of the statement where you make this general comment. You add before the meeting a good many were opposed to the no-fault proposal believing that we should make people responsible for their actions, and somehow or other the element of insurance affects the degree to which a driver is responsible. I flew on that assumption for a long time, too, but now when you examine it, if my life depended on it, I can't cite one example in my own driving friends who have ever told me, "Except for the insurance premium my friends who have ever told me, "except for the insurance premium I would run the light." I just don't buy that assumption.

Mr. MAX. Senator, you can appreciate that we are a profit-oriented industry and we operate by dollars and cents, and we are very clearly aware in our business of the fact that 45 percent of the people who have bodily injury claims are never compensated at all. It has been

brought out by the DOT studies and in the last few hours by Mr. Klein. We are aware of this.

At first we were very apprehensive about the dollar impact of no-fault, but then in getting into depth in this subject, while we do feel that there will be an interim increase in cost, we feel that ultimately this will balance out, and with the application of requirements to build a safer automobile, restraints for people in them, and matters of this kind, that all this being put together, we ultimately will develop more reasonable costs.

Senator HART. Are you saying, to make it more specific, that as the car is produced it has greater absorption and restraints which are—what do they call it—negative restraints?

Mr. MAX. Passive restraints.

Senator HART. That this will save you money.

Mr. MAX. Oh, there is no doubt about that. No doubt in our minds because, as I say, we work on a daily basis and we are clearly aware of the fact that a comparatively minor accident results in damage to an automobile that can amount to several hundred dollars. I think there have been studies on this at less than 5 miles an hour, something like \$250 of damage is performed. We are in this arena every day.

Mr. EDIDIN. Senator Hart, if I may be permitted a comment, in addition to my hats with the Hertz Corp., I am a member of the National Motor Vehicle Safety Advisory Council, where we consider many of the problems associated with the vehicle that I think you may be concerned with.

We conceive of the possibility, looking to the future and being responsible on a first-party basis for people within our vehicle, that a safer vehicle may enable us to realize a significant saving in insurance costs down the line. We don't see that possibility under the present system, the present tort system.

Senator HART. Even if the vehicle construction improved?

Mr. EDIDIN. Even if the vehicle construction improves, it may be of some help to people within the vehicle, but there is always the question of people outside the vehicle. First-party insurance, as I understand it with respect to this particular bill, concentrates with respect to people in our vehicle.

Senator HART. Several of you have spoken about the desirability of having a uniform national no-fault program. Conversely, somebody said it would be a disaster or a horror if there was a mixture across the country, and you cite the fact that you do business in several States; you are a vehicle renter across State lines repeatedly. Really that is true almost equally of the individual, is it not, whether engaged in the rental business or not?

In Detroit we live very close to a State line anyway, but many, many people either live close to a State line—some of them daily cross a State line—and in almost all cases on vacation or otherwise will reasonably be expected to move into two or three States.

Mr. MAX. Absolutely. Certainly in recent years since the Federal highway system has been expanded, our people, the individual is more mobile than ever before, and every individual—it is not just the people in our industry, we are speaking generally about all citizens—would be confronted with this same problem. I think Mr. Murphy of our company who is very familiar with this Massachusetts

situation we are in at the present time could perhaps make a comment on that situation.

Mr. MURPHY. I thought I would try to be responsive to Senator Hart's comment about the fact that we are consumers and we are not really different from the mass of individual consumers.

I think this is completely right. But the reason I think Mr. Edidin brought up the point that we would probably expect to benefit a little bit ahead of the individual consumers is we are a business where we will always have new cars, and as the passive restraints and bumpers come out, we would like to be responsible only for the environment that we control. So we think we will have the new cars 100 percent in our fleets probably a little bit ahead of the general public which takes time to turn over. For that reason, we are unique only to the extent that we will get there first in using all of the advantages of the new environment that you are giving us.

You see you are giving us a better physical environment, mechanical environment, and legal environment. We will benefit probably first in that area because our environment will have all of your advantages prior to the general public. We are not unique, we are merely going to be first. That is why we support you.

As for Massachusetts, I am a Massachusetts lawyer, I am not apologizing, and for 10 years I taught at Boston University and for 10 years I was a claims adjuster. I think the present Massachusetts law will work wonderfully for Massachusetts. I am very pleased you are not sponsoring such a law here. It is not a no-fault law there. It is a tort law. It has all the expenses of subrogation even in minor cases. But when one realizes that 82 percent of the people in Massachusetts for claims have counsel, 30 percent in Michigan, you realize there can be a great deal of improvement in Massachusetts on the law that they have.

It would appear also that Massachusetts law might rank with polio vaccine in clearing up the condition of what is known as Massachusetts back, but I don't think it is a model law for you.

Senator HART. I am so parochial, I don't get it. What do you mean by Massachusetts back?

Mr. MURPHY. It was a lumbosacral strain that everybody had in every accident to prove a back injury. It was always worth a couple of hundred dollars over a 10-year period, and now it will be cured by this no-fault, but it won't apply to every State.

Senator HART. My ignorance would suggest I haven't been a claims adjuster, a professor at Boston College or a practitioner in this field.

Mr. MURPHY. I merely point out that because I think your bill is much preferred above the tort approach in Massachusetts, even though that may be wonderful for Massachusetts.

Senator HART. I have just been given a statistic which is sobering, but very much in point, on the mobility that argues for the uniformity. I am told that of the total deaths as a result of automobile accidents, 12,000 involved people who were killed out of their State of residence, that is a pretty harsh underscoring of the necessity for a clearer understanding that we move around an awful lot in cars.

Mr. MAX. That's right. Senator, in our industry, we account for several hundred thousands of daily rental automobiles. All of these vehicles move over State lines, and you are probably familiar with the

expression, "Rent it here and leave it there," and perhaps 50 percent of all rentals in our industry are rentals where a man rents the car in one city and leave it in another city at the termination of the rental.

In some cases that city of termination of the rental may be within the State where it was originally rented, but in most cases it is over the State border. And this activity is growing constantly every year. It is an accepted service in our industry that is sought for by the public.

So, this would create as we say a positive disaster for our industry if we had a vehicle that was registered in the State of New York and had an accident in Connecticut or Vermont or New Jersey, all of which are contiguous in that area and other nearby States where they don't have to drive over in some cases less than 100 miles to be over the State line of four different States.

It is a very common situation, and we just shudder when we think of the application of variations of the Massachusetts law of a vehicle registered in the State of Massachusetts and going over into the State of Vermont or the State of New York and having an accident in that State, what sort of insurance laws are going to apply under a tort system and under a no-fault system or something that is in between.

The adjudication or responsibility itself would be an extremely complex matter.

Mr. EDWIN. Quite aside from the legal question, I shudder to think what would happen if one of our counter people tried to explain this to somebody: This is what happens to you if you have an accident in New York and this is what happens to you if you have an accident in New Jersey. If it is slow moving now, it is going to be terribly slow moving in terms of getting their car out of there. It would help us if there were a uniform system.

Mr. MURPHY. I would like to make Senator Hart's point again. We keep talking about our industry. In truth the industry doesn't drive our cars. All our cars are driven by the general public. We don't have anybody driving cars. You are driving our cars.

Senator HART. I hope very much that the Congress can be persuaded to recognize the desirability of a no-fault system, second, that we take the action at the Federal level and avoid the complications that you very vividly explained to us.

If we do that, I think it will be in large part because you have made it so understandable for us.

Gentlemen, thank you.

Mr. MAX. Senator, assisting you in your efforts and your committee in this is helping ourselves, because without it we will have chaos on our hands.

Senator HART. And Detroit would sell fewer cars. So you are helping me there, too.

Mr. MAX. I understand there are almost 20 no-fault bills up before State legislatures at the present time. I shudder to think of all the possible variations to the Massachusetts bill that are up there.

How can we ever operate with these vehicles registered in one State and having accidents in others?

Senator HART. Staff tells me the current count is 29 bills, each one different.

Thank you.

(The statement follows:)

## STATEMENT OF ROBERT A. SMALLEY, PRESIDENT, THE HERTZ CORP.

Mr. Chairman, and members of the committee, my name is Robert Smalley and I am the President and Chief Executive Office of The Hertz Corporation. Hertz is engaged in many aspects of the rental and leasing of personal property, primarily the rental and leasing of motor vehicles—cars and trucks. We are headquartered in New York, but Hertz operations are carried on in every state of the union and in over 100 foreign jurisdictions. Obviously, in view of the size of our vehicle fleet and with our far-flung operations we're enormously interested in any aspect of insurance costs and certainly in the kind of situation represented by a studied and general approach to a change in the basic concept of liability under which we've carried on our business for so many years.

I've listened with great interest to the statements made on behalf of CATRALA, of which we are a member. I'd like to add my approval to what has been said.

I don't want to say that I have read S. 945 all the way through. As a practical businessman, I usually leave this task to others—to specialists more versed than I in the intricacies of legislation—particularly legislation dealing with such an arcane, complex subject as insurance. But I have read enough of this bill and have discussed it sufficiently with specialists in the area to know that it is bold in concept, broad in scope. And yet its central theme—swift compensation of auto accident victims for economic loss, regardless of fault, through first-party insurance covering everyone involved—is simple and readily understood. I think we are on the threshold of a new era in legal techniques for dealing with an old problem—much like the era that began a half century ago with the adoption of workmen's compensation laws in the various states.

I will return to S. 945 in a few moments to offer some concrete observations and one or two suggestions I hope you will consider. But first, Mr. Chairman, let me digress briefly to touch upon some facts about our business that will show why no-fault legislation is so important to us.

It all began with the automobile, of course—the marvelous machine that has given us 20th Century Americans fantastic mobility and freedom, as well as monumental problems. I won't venture to say whether our relationship with the automobile is a passionate love affair or a marriage of convenience. Whichever it is, we and the automobile are clearly stuck with each other, for better or worse.

The connection between renting someone a car and providing him with insurance goes back to the beginnings of the business. In the early days, people who rented cars often did not own one. And of those who did own cars, few carried liability insurance to cover injuries to third parties resulting from an accident with the rented vehicle. And so it came about that Hertz provided liability insurance for every customer as a part of its rental contract.

Over the years, this insurance has been greatly broadened and improved. Today, Hertz and other major national companies provide their vehicle rental customers with liability coverage which is primary with respect to all other insurance. That is, the insurance on the rented vehicle must be exhausted before the customer's own insurance is called upon. Our industry took genuine pride in these advances, and believed a kind of zenith had been achieved in the realm of car rental insurance. Little did we know what lay ahead.

Until publication of the Keeton-O'Connell Basic Protection Plan in 1965, scarcely anyone would have predicted that in so short a time the liability insurance system itself would be scrutinized and found wanting. With astonishing swiftness, government, the professions, and the insurance business have all mobilized to re-examine and question the very foundation of the entire structure. I refer, of course, to the tort doctrine, which makes recovery of damages entirely contingent upon the presence or absence of fault in the legal sense. In my opinion, Mr. Chairman, the far-reaching and intensive study of this question by your Committee, as reflected in S. 945, has removed all doubt that the no-fault concept, intelligently implemented, is socially desirable and possesses clear advantages over the present system.

As originally drafted, the bill contained one feature that we are adamantly opposed to—the section according different treatment to vehicles "larger than an ordinary passenger automobile". In our view, this would impose an unfair and discriminatory economic burden upon owners of trucks and other commercial vehicles. I hope that the Committee is considering the removal of that feature of the bill, and I strongly urge that you do so, as it is unwarranted and unnecessary. Commercial vehicles carry the goods and the finished products used by every man, woman and child in the country—the cost of their operation is

borne by everyone in the prices paid for the essentials of life. It would be unwise and unfair to use the no-fault concept as a device to shift to the general consuming public a disproportionate share of the costs of vehicular accidents. That commercial vehicles will bear *no less* than their fair share of the burden is assured by the bill's preservation of the right to sue for damages in cases of catastrophic harm. In that respect, I should point out that the House Subcommittee on Commerce and Finance, in considering the companion bill to this one, H.R. 4994, has agreed with contentions made for this position and in H.R. 7514 has corrected the departure from the no-fault principle which the discriminatory singling out of commercial vehicles entailed.

Before leaving the subject of costs, I offer two further observations. Cost, after all, is just as crucial to the success of the program embodied in S. 945 as it is to the survival of any private business.

My first point relates to costs in the aggregate. If I understand the bill, it places no limit on the hospital, medical, rehabilitative and related expenses that can be recovered, save only that they be "appropriate and reasonable expenses necessarily incurred". I am sure the use of this language presupposes a proper review of all claims to be sure the standards of appropriateness, reasonableness and necessity are met. However, the bill also mandates that all payments for net economic loss be made "as such loss is incurred", and imposes a penalty of 2% a month on payments delayed over 30 days after receipt of "reasonable proof of the fact and amount of loss realized". Considering the volume of claims the system will have to process, I would ask the Committee to consider whether there may be insufficient opportunity for scrutiny of excessive or unwarranted claims.

The uncertainty of recovery under the present tort system and the delay in recovery of payment inherent in it tended to keep such costs down, particularly in view of the fact that the claimant or his doctor was making the outlay. While that system unquestionably did injury in many cases, removal of all of the restraints may act to sharply increase the costs of what is regarded as appropriate or reasonable expenditures. Some constraint is required, as some of our recent experience with medicare indicates, to prevent the costs of what is otherwise a fine program, from overrunning what society is willing to pay. The principle of what I'm talking about is seen in this very bill in terms of the amount awarded for loss of earnings. The 85% of earnings limitation is just the sort of gentle compulsion on an individual that I have in mind as a principle to be applied with respect to medical costs. Many insurance policies handle this by way of an initial deduction or an overall limitation. I do not suggest that, since I fully appreciate the importance of assuring prompt reimbursement for medical and related expenses, as a primary goal of the entire no-fault approach. It occurs to me that our collective experience under state workmen's compensation laws may contain valuable clues to attainment of both objectives here—prompt payment *and* proper control. We now have, as I mentioned earlier, a 50-year accumulation of statutory and administrative precedent under these laws, which can be seen as the direct lineal ancestors of the automobile no-fault plan we are discussing today. Accordingly, I would urge the Committee to draw on our successful experience with workmen's compensation in the event it shares my uncertainty over the question of costs.

My second observation looks more to the future than to our immediate concern, and relates to the peculiar—perhaps unique—situation of vehicle lessors. As I mentioned earlier, the history of our business has ordained that our customers receive insurance coverage as a part of the total vehicle rental package. And as the owner of the vehicle, we would provide the first-party accident insurance called for by S. 945 presumably on the same basis. Unlike the insurer of the family car, however, there is no way in which our insurer can rate our customers as individual risks when we put them behind the wheel of our vehicle. The result is that in a rental vehicle, the best risk incurs the same cost for coverage as the poorest.

We think the time is not far off—it may be here already—when it will be practicable to require that every holder of a driver's license bear the responsibility of maintaining his own individually rated automobile accident insurance, both first party and liability. In other words, the American insurance system should insure the driver, not the car. This may be the only way by which we can avoid the problem of the uninsured motorist. Figures I've seen indicate that, even in the District, a large percentage of vehicle owners carry no insurance. The only way I would think of reducing if not eliminating the problem would be for each driver to show evidence of insurance at the time he got his driver's license.

The vehicle owner would still be required, of course, to carry excess or supplemental coverage so there would be no gaps, but the driver's own insurance would be primary regardless of whether the accident occurred while he was operating his own vehicle, a friend's, or one of ours. I urge the Committee to consider the merits of this proposal, for such an arrangement is truly more logical than the practice of relating the obligation to maintain insurance to ownership of a particular vehicle, instead of to possession of an operator's license.

I have saved for the last that feature of the bill which evokes my warmest enthusiasm and support—uniformity throughout the land. A fundamental change in automobile insurance such as that represented by the no-fault concept cannot, in my judgment, be rationally introduced except under pre-emptive federal law such as S. 945, or at least under standards requiring substantial uniformity from state to state. Consider, for example, the utter chaos we would face in our business if the traveler who drives his rental car through two or three states in the course of a single trip must be covered for no-fault in one, liability in another, and a combination of the two in a third. Even assuming we ourselves will understand what we are doing, I blanch at the thought of explaining to a harried customer the varying coverages required under conflicting or inconsistent state laws. The same will be true, although to a lesser degree, in the case of the private vehicle owner. In this respect, there is no analogy to workmen's compensation, for a job site is fixed, whereas an automobile represents the ultimate in mobility.

Mr. Chairman and Members of the Committee, I deeply appreciate having had this opportunity to present my views on this vital subject, and thank you for your attention. Once again, I salute you for your outstanding contribution to the reform of our automobile accident compensation system.

Senator HART. The committee stands adjourned to resume at 10 o'clock tomorrow in this room.

(Whereupon, at 4:40 p.m., the hearing was adjourned, to reconvene at 10 a.m., Tuesday, May 4, 1971.)

O

U.C. BERKELEY LIBRARY



U.C. BERKELEY LIBRARY







wise not available, legal avenues and obligations are continued or revived.

We estimate at least 80 percent of claims for personal injury will be closed completely on a no-fault basis—fast, fairly, efficiently. Many others will recover most of their losses this way and in installments, as losses are suffered, and at a time when help is most needed.

One benefit is gone—the restriction on an injured party's right to recover more than he actually lost, in the name of damage for pain and suffering. That, of course, is how cost is reduced.

Various deductibles are available, leaving coverage decision to the consumer, not the insurance company.

Trial lawyers claim denial of the right to pain and suffering recovery deprives the individual of due process. We believe people want cheaper auto insurance and are willing to give up certain rights to get it—rights like duplicate payments and pain and suffering awards.

No-fault is under court challenge this very week in Massachusetts. We believe it will be held constitutional. If it is not, we will not return to the old system: we will turn to a State fund for auto insurance, if we must.

We are going to provide better auto insurance in Massachusetts. We want to end sale of double and triple recoveries for some injuries and to end compulsory coverage for pain and suffering. Nothing in our law prevents drivers from such purchases. But our larger goal is to provide protection to those more concerned with low cost than with cashing in on the misfortune of accident.

We've made a good start in Massachusetts—but we have a distance to go, and we need much more help from the industry than we've had. We have evidence some companies have failed to inform consumers that optional deductibles are available to them to reduce their total cost. We even have evidence some companies have refused to sell such deductibles. We have evidence some companies have forced customers to buy more property damage insurance than they want—or go without any auto insurance.

Such policies profit the companies, of course. But they grievously penalize the motorist. Let me illustrate.

In money terms—a driver in Boston with a single car and a son under 25 have various options open to him:

Full coverage of \$25,000 and \$50,000 bodily injury and \$5,000 property damage at a cost of \$565 a year. Incidentally, last year, before no-fault, that cost was \$600, and this year, without no-fault, that cost would have been \$725 or more.

A \$1,000 deductible for himself and his family would cost \$491, a savings of \$75.

Add to that a \$200 deductible on property damage and the premium drops to \$432, saving \$134.

Add in the full deductibles available and the cost could drop to \$418—nearly \$150 in savings a year.

Finding companies that will explain such options to a customer let alone sell them to him is no small task today in Massachusetts—and we may need tougher laws to force the industry to offer methods of making good on the promise of lower costs that no-fault holds out. If the still-accumulating evidence shows that we do, I will file such legislation. And we are already looking at ways to improve our rate-

U. S. CONGRESS. SENATE.

# AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

## HEARINGS . . .

BEFORE THE

## COMMITTEE ON COMMERCE UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

**S. 945**

UNIFORM MOTOR VEHICLE INSURANCE ACT

**S. 946**

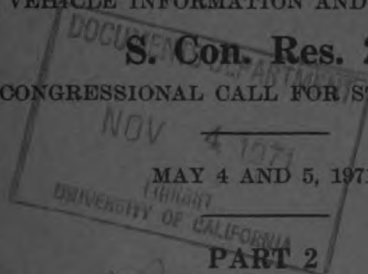
MOTOR VEHICLE GROUP INSURANCE ACT

**S. 976**

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

**S. Con. Res. 23**

CONGRESSIONAL CALL FOR STATE ACTION



Serial No. 92-18

Printed for the use of the Committee on Commerce



U.S.S.D.

"Translated into possible future premium reductions that comes out to a further premium cost cut of 25 percent for bodily injury insurance, though not property damage and collision for in those years price inflation and the high cost of auto repair drive these costs steadily up," Gov. Sargent said. "But in bodily injury, the only area affected by no-fault, we can at least hope for further cost cuts if present experience continues."

Gov. Sargent said he would release a statistical summary next week on the first three months of the first in the nation no-fault system.

"The great irony of no-fault so far is that the industry that fought it so hard is now profiting the most from it," said the governor. Further, the industry, while it profits, blocks the consumer from the benefit of the new system, he said.

Gov. Sargent told the insurance men they were keeping the public ignorant about how to take advantage of savings on auto insurance premiums.

"Last year we provided options in auto insurance to let the buyer build his own insurance program through bodily injury deductibles for those with sufficient health insurance," he said, "and \$100 and \$200 deductibles in property damage insurance."

"We encouraged companies to provide further deductibles to cut cost of collision and comprehensive insurance," he said.

"I am told the industry in some cases has not only failed to inform customers of these options but has actually refused to allow their purchase," Gov. Sargent said. "Worst of all, I am told that many companies have forced customers to buy more insurance than they want in order to buy any at all."

Gov. Sargent said he would order a "step up in investigation of the abuses so far charged—and the industry had better be ready to reply."

Senator HART. Our next witness, and we welcome him, is the executive director of the American Association of Motor Vehicle Administrators, Mr. Louis Spitz. Mr. Spitz is accompanied I understand by their director of public information, Mr. Robert Brown.

**STATEMENT OF LOUIS P. SPITZ, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS, WASHINGTON, D.C.; ACCOMPANIED BY ROBERT S. BROWN, JR., DIRECTOR OF PUBLIC INFORMATION**

Mr. Spitz. Thank you, Mr. Chairman.

I am very pleased to be afforded this opportunity to present to this distinguished committee the comments of the American Association of Motor Vehicle Administrators on S. 976—the Motor Vehicle Information and Cost Saving Act—jointly sponsored by Senator Hart, yourself, and your distinguished colleagues from Indiana, Maine, Wisconsin and Connecticut.

The apparent intent of S. 976 is well-aimed. A legislative measure which is designed to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, indeed aspires to a popular cause—popular with the motorist and consumer. Such competition is one of the basic underlying factors of a free-enterprise system.

By way of introduction, I am Louis P. Spitz, executive director of the AAMVA—a post which I have occupied for the past 4 years. Prior to that I was a director of the Nevada Department of Motor Vehicles for 8 years; and with the Reno, Nev. Police Department for 18 years. Three decades of my life have been dedicated to protecting the safety and well-being of motorists on our Nation's highways; and protecting the interests of the motoring public.

Therefore, I am delighted to review and offer my comments on any measure seeking to save lives—whether it be by elimination of acci-

dents or by assuring that if accidents occur that passengers and property will be less likely to be injured, killed or damaged.

It is my understanding that, if enacted, this very broad legislation would amend the National Traffic and Motor Vehicle Safety Act of 1966 to do the following:

Require that all cars manufactured after July 1, 1974, have a bumper that can withstand a five-mile-per-hour collision into a solid barrier with no damage.

Require manufacturers to rate their cars by their relative susceptibility to damage in low speed collisions.

Provide for establishment of a nationwide system of diagnostic inspection systems, for inspection of cars before consumers buy them and after crash repairs are made.

Require a uniform titling standard which includes a history of ownership—a family history—of each car.

Furthermore, S. 976 would apparently broaden the National Highway Traffic Safety Administration's mandate—contained in the National Traffic and Motor Vehicle Safety Act of 1966—to include promulgation of property loss reduction standards in addition to motor vehicle safety standards.

The American Association of Motor Vehicle Administrators is the association of State and Provincial officials responsible for the administration and enforcement of motor vehicle and traffic laws in the United States and Canada. Our association, quite naturally, has an intense interest in safe motor vehicle travel on our highways.

The feature in S. 976 that would require front and rear bumpers on 1975 model autos that would withstand a 5-mile-per-hour, car-to-fixed-barrier collision with no body damage, obviously is addressed to the loss reduction concept.

This comparatively new concept seeks not merely the limited goal of highway crash prevention per se, but, in a departure from traditional highway safety rhetoric, the wider goal of highway loss prevention by whatever means seems to work best.

This highway loss reduction concept has been gaining increasing popularity among safety professionals since the release of results of tests by the Insurance Institute for Highway Safety which showed that when four popular sedans were crashed into a solid barrier at 5 miles per hour, they averaged about \$200 each in damage. I believe that these test results originally were announced by Dr. William Had-don, Jr., president of the Insurance Institute for Highway Safety, in testimony before Senator Hart's Judiciary Subcommittee on Antitrust and Monopoly Legislation, during the hearings on auto repair costs. I assume that this provision in S. 976 is as a result of those auto repair hearings; and probably that specific testimony.

Loss reduction has received increasing attention from AAMVA's member States. There currently are two States which have enacted bumper legislation—the State of Florida during 1970 and the State of Maryland during the recently completed 1971 legislative session. More than 30 States—33 if memory serves me correctly—have considered measures related to bumper stability at low-speed impact during the 1971 legislative year.

The Federal Department of Transportation also has already acted to a limited extent in this area. On November 24, 1970, the National

Highway Safety Bureau—now known as the National Highway Traffic Safety Administration—issued a notice of proposed rulemaking on exterior protection of passenger cars.

Subsequently, DOT has issued an exterior protection standard which will provide for protection against damage to a limited range of safety-related equipment in 5-mile-per-hour crashes of front ends of vehicles, beginning with 1973 model year production; but only in 2.5-mile-per-hour crashes of the rear ends.

There are some differences in specifications between the Federal and State enacted provisions. Also, there apparently is a disagreement between State legislative leaders and the Department of Transportation over the preemption provision of this new DOT standard.

It is my understanding that the DOT is of the opinion that, once its standard takes effect, the State laws will become null. However, I also understand that this is based on an in-house opinion.

As is the case with most of the other highway safety and motor vehicle standards, it appears to AAMVA and its member States that ultimate enforcement of this standard will be left up to the State. Therefore, it would seem to us that if we are to have a Federal law, or Federal standard, that it should be confined to broad general guidelines. If the Secretary of Transportation is to promulgate the specifics of such a standard, we feel strongly that it should be in close consultation with the States; and, taking into consideration already effective State regulations in this matter.

It is difficult for States to retain a high level of enthusiasm and commitment for highway safety programs when, after expending a great deal of time and in some instances a great deal of money, they discover that shortly after their action that it is preempted by a Federal act. It is particularly discouraging when they discover that implementation of the Federal provision will require a substantial cost; and that the Federal law, in some instances, is not as strong as the State-enacted measure.

The provision in S. 976 that would require cars to be related for their relative susceptibility to damage in low-speed collisions is not primarily a safety-oriented consideration; but appears it would be of substantial interest to the consumer.

Since the damage susceptibility rating would apparently be based on a cost consideration, this matter would be of the greatest interest to those charged with the administration of consumer affairs, although there would be at least some loss reduction interest in this type of information. It could, quite logically, have a substantial influence on a consumer's decision in selecting an automobile, if such information were available.

I have offered comments previously, before Senator Hart's Judiciary Subcommittee on Antitrust and Monopoly Legislation, regarding diagnostic inspection of motor vehicles. My comments are contained in part 4 of the hearings on the automotive repair industry, held March 17-19, 1970, beginning on page 1774.

AAMVA still, Mr. Chairman, has reservations—such as expressed in the 1970 hearings before Senator Hart's subcommittee—about the probable high cost factor connected to installation of a State diagnostic system in any jurisdiction except Delaware, the District of Columbia, and New Jersey—the three with State-owned inspection sta-

tions. It very possibly could have the effect of pricing out of operation the 23 States which currently have programs with State-appointed inspection stations.

Another inspection-related provision in title 5 of S. 976 causes AAMVA some concern. It is the provision which states:

"No motor vehicle inspector may be certified by any state if he owns or receives any benefit in or from a business, or enterprise engaged in the repair or sale of motor vehicles, automotive repair parts, or accessories \* \* \*."

From a philosophical standpoint, such a proposal is sound. However, from a practical standpoint, we feel that such a standard in inspection would seriously jeopardize the programs in all 23 States where there is a State-appointed inspection system. We realize that there is a provision for areas of low population density; but we still feel that this provision would cause an adverse effect on a substantial number of inspection programs.

One other thing which I would like to note in passing is an apparent change in the thinking of the distinguished Senator from Michigan on the matters which we are addressing today. In a Detroit speech to the Society of Plastics Engineers on January 19, 1970, when this particular legislative program was outlined, Senator Hart stated that he felt that most of his plan could be accomplished without new Federal legislation.

Well, in view of the five bills connected with this package—including the broad proposals in S. 976; the national no-fault insurance proposal in the Uniform Motor Vehicle Insurance Act, S. 945; and the safety and consumer-related features of S. 946, S. 947, and S. 948; we at the AAMVA are certainly relieved that this was not a matter that would have required a substantial amount of Federal legislation.

However, there are several features in title 5 of S. 976 which appear to AAMVA to have considerable merit.

One in particular is the provision in section 502, paragraph B, which will enable the Secretary of Transportation to provide the States with financial incentive programs for establishing—if this bill is enacted—the inspection and tilting standards' provisions prescribed.

AAMVA feels that this discretionary 10 to 50 percent financial incentive, to assist States in underwriting the annual costs of such programs, is a far superior approach to the somewhat distasteful 10-percent-penalty provision for State noncompliance with the original 16 highway safety program standards.

(The following press release explains progress today by the States in implementing highway safety standards:)

Secretary of Transportation John A. Volpe has sent letters to the Nation's Governors telling them how their States rank and compare with all other States in their compliance with 16 Highway Safety Program Standards.

Under the Highway Safety Act of 1966, the States are responsible for carrying out highway safety programs to implement Federal Standards developed by the National Highway Traffic Safety Administration, and issued by the Secretary of Transportation.

In issuing a report card to the States, Secretary Volpe said:

"Ideally, all States should be fully implementing the highway safety standards . . . In my continuing review of the status of highway safety around the country, I find some advances and unhappily, some retrogression.

"As a former governor, I am of course fully appreciative of the problems in enacting your legislative programs and implementing and financing them. But the attack on highway deaths and accidents must be pressed without pause.











# **AUTOMOBILE INSURANCE REFORM AND COST SAVINGS**

---

## **HEARINGS BEFORE THE COMMITTEE ON COMMERCE UNITED STATES SENATE NINETY-SECOND CONGRESS**

**FIRST SESSION**

**ON**

**S. 945**

**UNIFORM MOTOR VEHICLE INSURANCE ACT**

**S. 946**

**MOTOR VEHICLE GROUP INSURANCE ACT**

**S. 976**

**MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT**

**S. Con. Res. 23**

**CONGRESSIONAL CALL FOR STATE ACTION**

---

**MAY 4 AND 5, 1971**

---

**PART 2**

---

**Serial No. 92-18**

---

**Printed for the use of the Committee on Commerce**



**U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1971**

**64-345**

**U.C. BERKELEY LIBRARY**

## COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island

VANCE HARTKE, Indiana

PHILIP A. HART, Michigan

HOWARD W. CANNON, Nevada

RUSSELL B. LONG, Louisiana

FRANK E. MOSS, Utah

ERNEST F. HOLLINGS, South Carolina

DANIEL K. INOUE, Hawaii

WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire

WINSTON PROUTY, Vermont

JAMES B. PEARSON, Kansas

ROBERT P. GRIFFIN, Michigan

HOWARD H. BAKER, Jr., Tennessee

MARLOW W. COOK, Kentucky

MARK O. HATFIELD, Oregon

TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*

MICHAEL PERTSCHUK, *Chief Counsel*

S. LYNN SUTCLIFFE, *Staff Counsel*

ARTHUR PANKOFF, Jr., *Minority Staff Director*

PETER POWELL, *Minority Professional Staff*

(II)

# CONTENTS

## CHRONOLOGICAL LIST OF WITNESSES

MAY 4, 1971

Bailey, James E., counsel, American Society of Insurance Management, Inc.; accompanied by William Mortimer, director of insurance, Norton Simon, Inc.; and Robert M. Frederickson, manager of claims, United Airlines.....	Page 438
Eustis, Harold, chairman of Casualty Committee, National Association of Insurance Agents, Greenville, Miss.; accompanied by Donald Perin, director of research.....	498
Summer 1971—Information Kit.....	553
Jackson, John, Washington representative for Commonwealth of Massachusetts, on behalf of Hon. Francis Sargent, Governor of Massachusetts.....	417
McGowan, Robert V., president of National Association of Mutual Insurance Agents, Investment Building, Washington, D.C.; accompanied by Lee E. Walton, chairman, Federal Legislative Steering Committee; and George G. Pitts, director of Government affairs.....	445
Copy of Massachusetts bill S. 1580.....	456
Prepared statement.....	472
Spitz, Louis P., executive director, American Association of Motor Vehicle Administrators, Washington, D.C.; accompanied by Robert S. Brown, Jr., director of public information.....	422

MAY 5, 1971

Capps, Joyce, representative, Women's Bar Association of the District of Columbia.....	671
Prepared statement.....	680
Greathouse, Pat, vice president, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW); accompanied by Jack Beidler, legislative director.....	577
Kuhn, Edward W., past president, American Bar Association, Memphis, Tenn.; Judge John T. Reardon, circuit court, Quincy, Ill.; Louis G. Davidson, past chairman, ABA Section of Insurance Negligence; and Thomas E. Deacy, Jr., Kansas City, Mo.....	629
Prepared statement.....	647
Markus, Richard, president, American Trial Lawyers Association; accompanied by Craig Spangerberg, chairman Auto Reparations Committee.....	582
Prepared statement.....	622
Brief.....	683
Smith, Willis, Jr., of Raleigh, N.C., president, the Defense Research Institute, Inc.; accompanied by Reid A. Curtis, past president, Association of Insurance Attorneys, Merrick, N.Y.; William E. Herod, president, Federation of Insurance Counsel, Nashville, Tenn.; Edward J. Kelly, president-elect of the International Association of Insurance Counsel, Des Moines, Iowa; James D. Ghiardi, research director, Defense Research Institute; and John J. Krichner, associate research director, Defense Research Institute.....	649
Prepared statement.....	663
Exhibit A.....	750
Exhibit B.....	760
Exhibit C.....	773
Exhibit D.....	798
Exhibit E.....	809
Exhibit F.....	847
Exhibit G.....	849
Exhibit H.....	863

(III)

U.C. BERKELEY LIBRARY

# IV

## ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

	Page
A Trial Lawyer's Legislative Workbook.....	922
A Federal Insurance Approach, article from the Minneapolis Star.....	1801
Advance Payments in Liability Claims, article by Buchheit, Young, and Kurtz.....	1207
Aiken, Hon. George D., U.S. Senator from Vermont, letter of May 8, 1971.....	1905
Allar, Alice M., letter with attachments of June 30, 1971.....	1979
American Association of Retired Persons, National Retired Teachers Association, statement.....	2084
Annual Style Change in the Automobile Industry as an Unfair Method of Competition, article from the Yale Law Journal.....	1318
Arbitration: The Philadelphia Story, article from the Journal of American Insurance.....	536
Bay State's Insurance Industry Hit (article from the Journal of Commerce, Apr. 26, 1971).....	921
Beirne, Joseph A., president, Communications Workers of America, statement.....	2083
Berry, Ross D., telegram of May 11, 1971.....	1955
"Energy-Absorbing Systems Vie for Role Behind Auto Bumpers", article by Nicholas P. Chironis.....	1929
Could Losing Legal Fees Explain Bar's Stand on Auto Insurance?, article from the Louisville Courier Journal.....	620
Ex-Supreme Court Justice Clark Hits No-Fault Insurance Proposal, article from Trial magazine.....	603
Fegraus, Clark E., president, and M. Van Loan, vice president, Automotive Environmental Systems, Inc., San Bernardino, Calif., statement.....	2064
Flanigan, James, counsel, statement of the Independent Garage Owners of America, Inc.....	1820
Friedman, Gilbert, letter of March 25, 1971.....	1708
Furness, Betty, State Consumer Protection Board of the State of New York:	
Telegram.....	404
Letters of April 27, 1971.....	1951
Gee, Thomas G., Graves, Dougherty, Gee, Heaton, Moody & Garwood, letter of February 16, 1967.....	925
Goodsell, Dr. John O., letter of March 31, 1971.....	1710
Griffith, R. W., vice president and actuary, Nationwide Mutual Insurance Co., letter.....	1442
Guiding Principles Relating to Automobile Insurance Claims, article.....	1209
Harriss, Lynn M. F., FASLA, letter of March 12, 1971.....	1949
Hart, Hon. Philip A., U.S. Senator from Michigan, letter of March 28, 1971.....	126
Hartke, Hon. Vance, U.S. Senator from Indiana, letter of June 26, 1969.....	1258
Heyworth, James O., president, Rehabilitation Institute of Chicago, letter of May 24, 1971.....	1956
Houston, Jack W., executive secretary, Georgia Association of Petroleum Retailers, Inc., letter of June 23, 1971.....	1977
Ingram, Denny O., Jr., letter.....	925
Insurance: The Road To Reform, article from the Consumer Reports.....	400
"Insurers and State Regulations Put Detroit on the Carpet", article by John Kolb and Michael Sheldrick.....	1928
International Longshoremen's & Warehousemen's Union, statement.....	2071
Jackson, William C., letter of May 11, 1971.....	1954
Jensen, Everett J., general secretary, Washington State Council of Churches, letter of April 22, 1971.....	1950
Jones, Frank K., president, Citizens Committee for Ethical Insurance, letters of:	
May 28, 1971.....	2027
May 5, 1971.....	2030
March 1, 1970.....	2036
August 30, 1970.....	2037
Keep the Compulsory (article from the Boston Globe, Tuesday, Dec. 6, 1966).....	920
Laurence, A. E., letter of May 10, 1971.....	1921
Leach, Austin F., vice president, Corporate Projects, Omark Industries, letter with attachments of June 8, 1971.....	1982

Leighton, Howard H., president, National Association of Insurance Agents, Inc., letter of March 19, 1971.....	Page 1949
Lorenzi, John de, managing director, Public and Government Relations, American Automobile Association, letter of June 4, 1971.....	1965
Mackoff, Benjamin S., administrative director, Circuit Court of Cook County, Ill., statement.....	2069
Magnuson Hon. Warren G., U.S. Senator from Washington, and chairman of the Senate Committee on Commerce, letters of:	
March 24, 1971.....	50
May 27, 1971.....	98
Maisonpierre, Andre, vice president, American Mutual Insurance Alliance letter of July 22, 1971.....	1902
Marshall, James, counsel, statement.....	2077
McDonald, Ernest, letter of May 5, 1971.....	1952
Michael, Bayard H., letter of April 6, 1971.....	1707
Mingle, Frank A., Motors Insurance Corp., letter.....	1282
Morrissey, William W., vice president, Marketing, Lau Inc., letter of June 14, 1971.....	1974
National Association of Mutual Insurance Companies, statement.....	2081
National Conference of Commissioners on Uniform State Laws, letter of April 13, 1971.....	1804
National Highway Safety Bureau, Federal Highway Administration, U.S. Department of Transportation, Comparative Crash Survivability of Motor Vehicles.....	1258
"National No-Fault" (article from the Boston Globe, Friday, April 30, 1971).....	921
Nielsen, Robert R., letter of May 13, 1971.....	1955
"No-Fault Car Insurance Has Faults," article by Jack Mabley, from Chicago Today, April 15, 1971.....	2074
O'Connell, Prof., Jeff criticizing Ogilvie No-Fault insurance bill, statement.....	2075
Ogilvie, Hon. Richard B., Governor, State of Illinois, letter of May 12, 1971.....	1761
Rafferty, William A., executive vice president, Motor and Equipment Manufacturers Association, letter of May 28, 1971.....	1959
Rogers, Norman L., president, Lawyer Reform of the United States, statement.....	2081
Rue, Charles L., chairman, National Affairs Committee, Independent Mutual Insurance Agents Association of New York, New Jersey, and Connecticut, statement.....	2066
Salter, Leon J., letter.....	1920
Scariano, Anthony, statement on H.R. 7515.....	2072
Schmitt, Allen, president, Kentucky State Bar Association, resolution.....	619
Schneider, Lawrence R., acting chief counsel, National Highway Traffic Safety Administration, Department of Transportation, letter of July 1, 1971.....	1881
Smith, Sherman T., Southern Service Co., letter of April 26, 1971.....	1950
Spaeth, Karl H., letter of May 11, 1971.....	1953
Sternberg, E. R., director, Engineering Planning Truck Group, White Motor Corp., letter of June 11, 1971.....	1967
"The 'No Fault' Insurance Plan" article from the San Francisco Chronicle, dated March 24, 1971.....	1709
Thompson, H. C., president, and John Huemrich, executive director, National Congress of Petroleum Retailers, statement.....	2064
Tiebel, Harriet, executive director, American Occupational Therapy Association, Inc., letter of May 28, 1971.....	1957
Toms, Douglas W., Acting Administrator, National Highway Traffic Safety Administration, letter of January 15, 1971.....	1946

# VI

Turner, Frank C., U.S. Department of Transportation, letter of November 18, 1969.....	Page 1255
Vindral, George, article from Voice of the People, Chicago Tribune.....	1921
Voelker, William J., president, Illinois Defense Counsel, letter of May 14, 1971.....	1779
Volpe, John A., Secretary of Transportation, letter of June 8, 1971.....	1885
Walsh, C. A., Jr., vice president, Marketing, Atlantic Richfield Co., letter of June 18, 1971.....	1975
Walsh, Richard F., Deputy Director of Policy and Plans Development, letter of June 7, 1971.....	655
Wandschneider, Werner, Stonecrest Furniture House, letter of June 8, 1971.....	1920
Watson, Gilbert L., Consumer Affairs Officer, letters of: March 10, 1971.....	1943
April 23, 1971.....	1922
Wetzel, Robert, president, Riverside Auto Lab Inc., letter of May 28, 1971.....	1963
Wire Taps (article from the Boston Sunday Globe, April 25, 1971).....	922
Zal, Frank, arbitration commissioner, report.....	504

# AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

TUESDAY, MAY 4, 1971

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart, Moss, Cook, and Stevens.

Senator HART. The committee will be in order.

We are resuming hearings this morning on S. 945, S. 946, S. 976, and the Senate Concurrent Resolution 23.

Yesterday the testimony that we received supported generally a national no-fault approach. From Puerto Rico we heard from Mr. Fournier. He explained how the no-fault approach there had performed successfully. From Consumers Union we heard Mr. Klein testifying for that organization, and the Consumer Federation of America, both support S. 945, S. 946, and 976. And representatives of the Car and Truck Rental and Leasing Association expressed their general support of a national no-fault approach.

Today's testimony promises to offer a different perspective. Unfortunately the distinguished Governor of Massachusetts, Governor Sargent, called late yesterday afternoon—actually early last night. He described circumstances which had developed in Massachusetts which compelled his staying there. But Mr. Jackson will present the Governor's statement.

In view of Governor Sargent's absence, I would suggest that any questions we would want to address to the Governor be submitted in writing.

Senator COOK. I agree, Mr. Chairman.

Senator HART. Mr. Jackson, good morning.

## STATEMENT OF JOHN JACKSON, WASHINGTON REPRESENTATIVE FOR THE COMMONWEALTH OF MASSACHUSETTS, ON BEHALF OF HON. FRANCIS SARGENT, GOVERNOR OF MASSACHUSETTS

Mr. JACKSON. I am John Jackson, Washington representative for the Commonwealth of Massachusetts. I apologize for my Governor not being here this morning. He has agreed if you submit questions he will answer them for the record.

I will read his statement:

I am here today in two capacities—and both pleased and honored to be.

I am here on behalf of the National Governors' Conference, and in that capacity—and at the outset—I would like to report that body's

Staff member assigned to these hearings: S. Lynn Sutcliffe.

point of view. The conference has endorsed the concept of stated regulation rather than Federal regulation of auto insurance. It has taken no position on the question of the no-fault approach to auto insurance. For my own part, I share the view that it is desirable to permit the several States to design, test and evaluate various approaches to insurance reform. I believe that evaluation will result in adoption of the no-fault concept and that from the varied experience of many States will come solid ideas that will benefit all of us, perhaps more than single Federal program would.

In my capacity as Governor of Massachusetts, the first American State to put a no-fault plan into effect, I would like to share with the committee the Massachusetts experience to date. To do so will require a look backward and a look ahead, for both perspectives are part of that experience.

No-fault came hard to Massachusetts. The ideas were debated 4 years—and trial lawyers and insurance companies blocked insurance reform throughout that period. Today, the trial lawyers remain opposed, but some of the insurance companies favor the plan.

The final bill, as I received it, was a piece of goods damaged in transit through the legislative process. Those no longer able to defeat the bill, did manage to cripple and distort it.

But after 40 years of a bad system, I had the chance to sign at least the basis for a good one—and I did so. However, those insurance companies that had come to support the no-fault concept, threatened to quit Massachusetts because of defects in the legislation. We corrected those defects with additional legislation, the companies remained to do business—and the first-quarter results are now in.

They are striking.

Costs have been cut to the consumer. Instead of rate increases of 20-30 percent that would have gone into effect, we cut bodily injury by 15 percent for both compulsory and noncompulsory coverage. Further, motorists had the choice of deductibles to reduce their costs from 6 to 30 percent more. Finally, rather than increases that were asked in medical payments insurance, we were able to make it an excess coverage and cut its rate by 25 percent over last year.

Our insurance commissioner had to approve increases in property damage rates for this year—but the no-fault bill was not involved. And in this area, we directed companies to offer options of \$100 and \$200 deductibles for property damage insurance. More, I am backing the triple option approach to property damage this year to provide more choice for those insuring their vehicles.

So, we have succeeded in first stopping and the reducing the previously steady annual rise in auto insurance costs.

And a 3-month statistical study of no-fault results show the future cost of auto insurance can be slashed further.

The actual number of claims for injuries made to insurance companies in Massachusetts during the first 3 months of no-fault operation has dropped a startling 60 percent. Field examination of those claims—14,218 of them—show that the average amount paid out for injuries has also dropped—in this case 36 percent. Plainly those facts mean future insurance cost cutting.

The study also shows a speedup in the rate of claim payments. For it indicates that payments have been made on some 12 percent of the

claims reported in these 3 months compared to a payment rate of under 5 percent in the same period a year ago. And, our study shows no-fault is paying more of the injured reporting claims in that a higher number of the accidents have produced more than one no-fault claim.

All this information comes from actual examinations of the claims reports made to companies in these 3 months.

Other data from our registry of motor vehicles first of all shows that the number of accidents are up this year over last. But nearly 33 percent fewer people involved in them are reporting bodily injury while some 47 percent more are indicating to the registry that the accident resulted in damage to property of \$200 or more.

It's too soon to tell what these figures mean. It has been said that the best way to get fast settlement for car damage is to claim bodily injury. Maybe, now that a bodily injury claim is made to one's own company, people have stopped making injury claims to speed repair of a damaged vehicle. If insurance companies settled property damage claims as they should, that would be one thing. I'm dubious—and, as I did last year, I'll try to reform our property damage system too.

Another possibility is that people don't understand their right to quick medical expense payment under no-fault. The industry hasn't helped much in that regard. Along with threats to leave the State, a barrage of press releases, the mailing of cancellation notices, the industry, despite pious claims to the contrary, did not break its neck to educate the public to a new system. We need a better education program on the new plan.

Claim costs are down 36 percent so far over last year's first quarter, and we have reason to hope for premium cuts next year. But there's more to no-fault than that.

Auto accidents killed 56,000 people in 1969, injured 4½ million more and cost \$16.5 million dollars. Our legal system leaves to tort or fault law the decision as to which of the injured shall be compensated. Finding someone who was at fault is crucial to the decision.

The question is not—who was hurt—but, rather, who was in the wrong. Auto insurance has been designed to provide financial protection to a driver who may wind up at fault, and, therefore, financially liable. Our premise, and it has been so for 43 years in Massachusetts, has been that auto insurance should help the injured by guaranteeing the possibility of compensation, though requiring establishment of who was at fault.

No-fault eliminated the need to find a villain. It does not require someone be found who is to blame in order to permit the injured to obtain compensation.

Let me highlight the Massachusetts plan for you. First, all coverage and protection provided by the old plan is still provided. Simply, we've added a wider medical payments type of coverage on top of compulsory liability insurance. Then, through a tort exemption we've made that coverage the primary and sole source of recovery for the first \$2,000 of loss sustained by injured accident victims.

The injured will look first to the no-fault coverage on the car they are occupying for hospital, medical, and lost wages (or its equivalent) expenses. Where such coverage is open to them they will have no right to litigate for loss recoverable on a no-fault basis. But where loss exceeds the \$2,000 per person limit, includes other losses, or are other-

wise not available, legal avenues and obligations are continued or revived.

We estimate at least 80 percent of claims for personal injury will be closed completely on a no-fault basis—fast, fairly, efficiently. Many others will recover most of their losses this way and in installments, as losses are suffered, and at a time when help is most needed.

One benefit is gone—the restriction on an injured party's right to recover more than he actually lost, in the name of damage for pain and suffering. That, of course, is how cost is reduced.

Various deductibles are available, leaving coverage decision to the consumer, not the insurance company.

Trial lawyers claim denial of the right to pain and suffering recovery deprives the individual of due process. We believe people want cheaper auto insurance and are willing to give up certain rights to get it—rights like duplicate payments and pain and suffering awards.

No-fault is under court challenge this very week in Massachusetts. We believe it will be held constitutional. If it is not, we will not return to the old system: we will turn to a State fund for auto insurance, if we must.

We are going to provide better auto insurance in Massachusetts. We want to end sale of double and triple recoveries for some injuries and to end compulsory coverage for pain and suffering. Nothing in our law prevents drivers from such purchases. But our larger goal is to provide protection to those more concerned with low cost than with cashing in on the misfortune of accident.

We've made a good start in Massachusetts—but we have a distance to go, and we need much more help from the industry than we've had. We have evidence some companies have failed to inform consumers that optional deductibles are available to them to reduce their total cost. We even have evidence some companies have refused to sell such deductibles. We have evidence some companies have forced customers to buy more property damage insurance than they want—or go without any auto insurance.

Such policies profit the companies, of course. But they grievously penalize the motorist. Let me illustrate.

In money terms—a driver in Boston with a single car and a son under 25 have various options open to him:

Full coverage of \$25,000 and \$50,000 bodily injury and \$5,000 property damage at a cost of \$565 a year. Incidentally, last year, before no-fault, that cost was \$600, and this year, without no-fault, that cost would have been \$725 or more.

A \$1,000 deductible for himself and his family would cost \$491, a savings of \$75.

Add to that a \$200 deductible on property damage and the premium drops to \$432, saving \$134.

Add in the full deductibles available and the cost could drop to \$418—nearly \$150 in savings a year.

Finding companies that will explain such options to a customer let alone sell them to him is no small task today in Massachusetts—and we may need tougher laws to force the industry to offer methods of making good on the promise of lower costs that no-fault holds out. If the still-accumulating evidence shows that we do, I will file such legislation. And we are already looking at ways to improve our rate-

setting process. It does not today result in fair and reasonable rates and it lacks a consumer voice in its deliberations.

I hope the experience I have summarized for you today is helpful in your consideration of the legislation and the ideas before you. We have not found all the answers in Massachusetts, but we have asked the right questions and found, we think at least some of the correct answers.

Auto insurance is as complex a subject as any your committee and this Congress will confront. We think we've blazed a trail through a kind of wilderness—and we hope our history will help you and, through you, the Nation.

Again, on behalf of the National Governors Conference, and for myself, my thanks for the opportunity to be here today.

Senator HART. Mr. Jackson, thank you for presenting to us Governor Sargent's view and the views, as he indicates, of the Governors' conference.

Senator Moss and Senator Stevens arrived since you started. The Governor suggested that questions we intended to address to him be submitted to him in writing.

Governor Sargent has not been silent with respect to some of the concerns he voiced in the testimony you have given us. I think we should add to the record the story out of the Journal of Commerce of April 26 where, among other things the Governor said as reported by the Journal of Commerce:

The auto insurance industry was bitterly criticized here today by the Commonwealth's Governor for failing to pass onto consumers the substantial savings the companies incurred from the Bay State's 3-month old no-fault auto insurance system. Governor Francis W. Sargent said that during the first 3 months of this year, the underwriters have seen their claim costs drop by over 35 percent and have not come forward with plans to lower premiums.

At another point in this same Journal of Commerce report with respect to the several insurance programs that are available now under Massachusetts law, but about which the consumer is in ignorance, the Governor's statement was:

"I am told the industry in some cases has not only failed to inform the customers of these options but has actually refused to allow their purchase," Governor Sargent said. "Worst of all, I am told that many companies have forced customers to buy more insurance than they want in order to buy any at all."

The auto insurance industry was bitterly criticized here today by the Commonwealth's governor for failing to pass onto consumers the substantial savings the companies have incurred from the Bay State's 3-month old no-fault auto insurance system.

Gov. Francis W. Sargent said that during the first three months of this year, the underwriters have seen their claim costs drop by over 35 percent but have not come forward with plans to lower premiums.

The governor also alleged that many insurers have tried to obscure the options in the no-fault program which would lower their auto insurance rates.

"The average paid claim cost in the first quarter of last year was \$205," Gov. Sargent said. "The average paid claim cost in the first quarter of this year is \$131. The total amount of paid losses in the first quarter of last year were \$359,590—this year they are \$229,479."

#### 36 PC REDUCTION

"That is a 36 percent reduction (in claim costs) this year over last," the governor said in an address before the Massachusetts Association of Independent Insurance Agents and Brokers.

The governor said if the average paid claim costs for 1971 hold at the present rate through June they will be 69 percent lower than the first six months of 1970.

"Translated into possible future premium reductions that comes out to a further premium cost cut of 25 percent for bodily injury insurance, though not property damage and collision for in those years price inflation and the high cost of auto repair drive these costs steadily up," Gov. Sargent said. "But in bodily injury, the only area affected by no-fault, we can at least hope for further cost cuts if present experience continues."

Gov. Sargent said he would release a statistical summary next week on the first three months of the first in the nation no-fault system.

"The great irony of no-fault so far is that the industry that fought it so hard is now profiting the most from it," said the governor. Further, the industry, while it profits, blocks the consumer from the benefit of the new system, he said.

Gov. Sargent told the insurance men they were keeping the public ignorant about how to take advantage of savings on auto insurance premiums.

"Last year we provided options in auto insurance to let the buyer build his own insurance program through bodily injury deductibles for those with sufficient health insurance," he said, "and \$100 and \$200 deductibles in property damage insurance."

"We encouraged companies to provide further deductibles to cut cost of collision and comprehensive insurance," he said.

"I am told the industry in some cases has not only failed to inform customers of these options but has actually refused to allow their purchase," Gov. Sargent said. "Worst of all, I am told that many companies have forced customers to buy more insurance than they want in order to buy any at all."

Gov. Sargent said he would order a "step up in investigation of the abuses so far charged—and the industry had better be ready to reply."

Senator HART. Our next witness, and we welcome him, is the executive director of the American Association of Motor Vehicle Administrators, Mr. Louis Spitz. Mr. Spitz is accompanied I understand by their director of public information, Mr. Robert Brown.

**STATEMENT OF LOUIS P. SPITZ, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS, WASHINGTON, D.C.; ACCOMPANIED BY ROBERT S. BROWN, JR., DIRECTOR OF PUBLIC INFORMATION**

Mr. SPITZ. Thank you, Mr. Chairman.

I am very pleased to be afforded this opportunity to present to this distinguished committee the comments of the American Association of Motor Vehicle Administrators on S. 976—the Motor Vehicle Information and Cost Saving Act—jointly sponsored by Senator Hart, yourself, and your distinguished colleagues from Indiana, Maine, Wisconsin and Connecticut.

The apparent intent of S. 976 is well-aimed. A legislative measure which is designed to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, indeed aspires to a popular cause—popular with the motorist and consumer. Such competition is one of the basic underlying factors of a free-enterprise system.

By way of introduction, I am Louis P. Spitz, executive director of the AAMVA—a post which I have occupied for the past 4 years. Prior to that I was a director of the Nevada Department of Motor Vehicles for 8 years; and with the Reno, Nev. Police Department for 18 years. Three decades of my life have been dedicated to protecting the safety and well-being of motorists on our Nation's highways; and protecting the interests of the motoring public.

Therefore, I am delighted to review and offer my comments on any measure seeking to save lives—whether it be by elimination of acci-

dents or by assuring that if accidents occur that passengers and property will be less likely to be injured, killed or damaged.

It is my understanding that, if enacted, this very broad legislation would amend the National Traffic and Motor Vehicle Safety Act of 1966 to do the following:

Require that all cars manufactured after July 1, 1974, have a bumper that can withstand a five-mile-per-hour collision into a solid barrier with no damage.

Require manufacturers to rate their cars by their relative susceptibility to damage in low speed collisions.

Provide for establishment of a nationwide system of diagnostic inspection systems, for inspection of cars before consumers buy them and after crash repairs are made.

Require a uniform titling standard which includes a history of ownership—a family history—of each car.

Furthermore, S. 976 would apparently broaden the National Highway Traffic Safety Administration's mandate—contained in the National Traffic and Motor Vehicle Safety Act of 1966—to include promulgation of property loss reduction standards in addition to motor vehicle safety standards.

The American Association of Motor Vehicle Administrators is the association of State and Provincial officials responsible for the administration and enforcement of motor vehicle and traffic laws in the United States and Canada. Our association, quite naturally, has an intense interest in safe motor vehicle travel on our highways.

The feature in S. 976 that would require front and rear bumpers on 1975 model autos that would withstand a 5-mile-per-hour, car-to-fixed-barrier collision with no body damage, obviously is addressed to the loss reduction concept.

This comparatively new concept seeks not merely the limited goal of highway crash prevention per se, but, in a departure from traditional highway safety rhetoric, the wider goal of highway loss prevention by whatever means seems to work best.

This highway loss reduction concept has been gaining increasing popularity among safety professionals since the release of results of tests by the Insurance Institute for Highway Safety which showed that when four popular sedans were crashed into a solid barrier at 5 miles per hour, they averaged about \$200 each in damage. I believe that these test results originally were announced by Dr. William Haddon, Jr., president of the Insurance Institute for Highway Safety, in testimony before Senator Hart's Judiciary Subcommittee on Antitrust and Monopoly Legislation, during the hearings on auto repair costs. I assume that this provision in S. 976 is as a result of those auto repair hearings; and probably that specific testimony.

Loss reduction has received increasing attention from AAMVA's member States. There currently are two States which have enacted bumper legislation—the State of Florida during 1970 and the State of Maryland during the recently completed 1971 legislative session. More than 30 States—33 if memory serves me correctly—have considered measures related to bumper stability at low-speed impact during the 1971 legislative year.

The Federal Department of Transportation also has already acted to a limited extent in this area. On November 24, 1970, the National

Highway Safety Bureau—now known as the National Highway Traffic Safety Administration—issued a notice of proposed rulemaking on exterior protection of passenger cars.

Subsequently, DOT has issued an exterior protection standard which will provide for protection against damage to a limited range of safety-related equipment in 5-mile-per-hour crashes of front ends of vehicles, beginning with 1973 model year production; but only in 2.5-mile-per-hour crashes of the rear ends.

There are some differences in specifications between the Federal and State enacted provisions. Also, there apparently is a disagreement between State legislative leaders and the Department of Transportation over the preemption provision of this new DOT standard.

It is my understanding that the DOT is of the opinion that, once its standard takes effect, the State laws will become null. However, I also understand that this is based on an in-house opinion.

As is the case with most of the other highway safety and motor vehicle standards, it appears to AAMVA and its member States that ultimate enforcement of this standard will be left up to the State. Therefore, it would seem to us that if we are to have a Federal law, or Federal standard, that it should be confined to broad general guidelines. If the Secretary of Transportation is to promulgate the specifics of such a standard, we feel strongly that it should be in close consultation with the States; and, taking into consideration already effective State regulations in this matter.

It is difficult for States to retain a high level of enthusiasm and commitment for highway safety programs when, after expending a great deal of time and in some instances a great deal of money, they discover that shortly after their action that it is preempted by a Federal act. It is particularly discouraging when they discover that implementation of the Federal provision will require a substantial cost; and that the Federal law, in some instances, is not as strong as the State-enacted measure.

The provision in S. 976 that would require cars to be related for their relative susceptibility to damage in low-speed collisions is not primarily a safety-oriented consideration; but appears it would be of substantial interest to the consumer.

Since the damage susceptibility rating would apparently be based on a cost consideration, this matter would be of the greatest interest to those charged with the administration of consumer affairs, although there would be at least some loss reduction interest in this type of information. It could, quite logically, have a substantial influence on a consumer's decision in selecting an automobile, if such information were available.

I have offered comments previously, before Senator Hart's Judiciary Subcommittee on Antitrust and Monopoly Legislation, regarding diagnostic inspection of motor vehicles. My comments are contained in part 4 of the hearings on the automotive repair industry, held March 17-19, 1970, beginning on page 1774.

AAMVA still, Mr. Chairman, has reservations—such as expressed in the 1970 hearings before Senator Hart's subcommittee—about the probable high cost factor connected to installation of a State diagnostic system in any jurisdiction except Delaware, the District of Columbia, and New Jersey—the three with State-owned inspection sta-

tions. It very possibly could have the effect of pricing out of operation the 23 States which currently have programs with State-appointed inspection stations.

Another inspection-related provision in title 5 of S. 976 causes AAMVA some concern. It is the provision which states:

"No motor vehicle inspector may be certified by any state if he owns or receives any benefit in or from a business, or enterprise engaged in the repair or sale of motor vehicles, automotive repair parts, or accessories \* \* \*."

From a philosophical standpoint, such a proposal is sound. However, from a practical standpoint, we feel that such a standard in inspection would seriously jeopardize the programs in all 23 States where there is a State-appointed inspection system. We realize that there is a provision for areas of low population density; but we still feel that this provision would cause an adverse effect on a substantial number of inspection programs.

One other thing which I would like to note in passing is an apparent change in the thinking of the distinguished Senator from Michigan on the matters which we are addressing today. In a Detroit speech to the Society of Plastics Engineers on January 19, 1970, when this particular legislative program was outlined, Senator Hart stated that he felt that most of his plan could be accomplished without new Federal legislation.

Well, in view of the five bills connected with this package—including the broad proposals in S. 976; the national no-fault insurance proposal in the Uniform Motor Vehicle Insurance Act, S. 945; and the safety and consumer-related features of S. 946, S. 947, and S. 948; we at the AAMVA are certainly relieved that this was not a matter that would have required a substantial amount of Federal legislation.

However, there are several features in title 5 of S. 976 which appear to AAMVA to have considerable merit.

One in particular is the provision in section 502, paragraph B, which will enable the Secretary of Transportation to provide the States with financial incentive programs for establishing—if this bill is enacted—the inspection and tilting standards' provisions prescribed.

AAMVA feels that this discretionary 10 to 50 percent financial incentive, to assist States in underwriting the annual costs of such programs, is a far superior approach to the somewhat distasteful 10-percent-penalty provision for State noncompliance with the original 16 highway safety program standards.

(The following press release explains progress today by the States in implementing highway safety standards:)

Secretary of Transportation John A. Volpe has sent letters to the Nation's Governors telling them how their States rank and compare with all other States in their compliance with 16 Highway Safety Program Standards.

Under the Highway Safety Act of 1966, the States are responsible for carrying out highway safety programs to implement Federal Standards developed by the National Highway Traffic Safety Administration, and issued by the Secretary of Transportation.

In issuing a report card to the States, Secretary Volpe said:

"Ideally, all States should be fully implementing the highway safety standards . . . In my continuing review of the status of highway safety around the country, I find some advances and unhappily, some retrogression.

"As a former governor, I am of course fully appreciative of the problems in enacting your legislative programs and implementing and financing them. But the attack on highway deaths and accidents must be pressed without pause.

With nearly all legislative bodies now in session, it is most timely that as a first step, you seek passage of the traffic safety laws your State needs and put them into effect as soon as possible."

The letters also included a list for each State of specific legislative and administrative steps which it has not taken. The rating grade takes into consideration the State's announced plan as well as its current program level.

The National Highway Safety Advisory Committee, appointed by the President, recommended that Secretary Volpe send the letters to the Governors.

The Secretary sent the Governors a chart showing a fundamental grading system ranging from A to D. This grading system was developed so that each State, the District of Columbia, and Puerto Rico could readily compare its progress or lack of progress with the record of other States in relation to each of the Federal Standards.

The letter code indicates:

- (A)—The State is currently fully implementing the requirements of the Standards.
- (B)—The State's program, when implemented, will conform substantially to the requirements of the Standards.
- (C)—The program when implemented will demonstrate acceptable progress toward implementation of the elements of the Standards.
- (D)—The program does not demonstrate acceptable progress toward implementation of elements of the Standards.

The 16 Highway Safety Program Standards issued by the Secretary of Transportation include: Periodic Motor Vehicle Inspection; Motor Vehicle Registration; Motorcycle Safety; Driver Education; Driver Licensing; Codes and Laws; Traffic Courts; Alcohol in Relation to Highway Safety; Identification and Surveillance of Accident Locations; Traffic Records; Emergency Medical Services; Highway Design, Construction, and Maintenance; Traffic Lighting and Control Devices; Pedestrian Safety; Police Traffic Services, and Debris Hazard Control and Cleanup.

The States ranked in the top 10 in compliance are New York, Virginia, California, Louisiana, South Carolina, Delaware, Pennsylvania, Rhode Island, Utah, and Washington. Out of a total of 832 possible grades, there were 29 A's, 775 B's and C's, and 28 D's. Almost 94 percent of the grades were in the B and C category.

Acting Traffic Safety Administrator Douglas Toms said effective State highway safety programs will help achieve the goal of reducing highway crashes and resulting casualties.

"We are faced with 150 highway deaths a day in this country—a dismal toll. But we are making progress. Highway fatalities in 1970 totaled 55,300, but significantly, there were 1,100 fewer deaths than in 1969," Toms said.

"We are charged by law to look at the total State program and its effectiveness. Therefore, in reviewing the programs and working with the States from a technical point of view, we are together improving the quality and effectiveness of the program."

Failure to implement an approved program could result in the loss of Federal funds available for grants to the States and local communities under the Highway Safety Act of 1966. It could also lead to loss of 10 percent of the State's Federal-aid highway construction funds.

Attachment.

A - FULLY DEMONSTRATING  
B - SUBSTANTIAL CONFORMANCE

C - DEMONSTRATES ACCEPTABLE PROGRESS  
D - DOES NOT DEMONSTRATE ACCEPTABLE PROGRESS

STATE	P&A	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316
ALABAMA	OK	C	C	C	C	C	C	C	B	D	C	B	D	D	C	C	C
ALASKA	A	D	C	C	C	C	B	B	B	C	B	B	B	C	C	C	B
ARIZONA		C	B	B	C	B	B	B	B	C	C	C	D	D	B	C	B
ARKANSAS		B	B	B	C	B	B	B	A	C	C	C	B	C	C	C	C
CALIFORNIA		B	B	C	B	B	C	B	A	B	B	C	B	B	C	B	B
COLORADO		B	B	A	C	B	C	B	C	B	B	C	C	B	C	B	C
CONNECTICUT		D	B	C	B	C	B	A	B	B	B	C	B	B	B	C	C
DELAWARE		B	B	B	B	B	B	A	C	B	B	C	C	C	C	B	C
FLORIDA		C	B	B	B	B	C	B	C	B	C	C	C	B	C	C	B
GEORGIA		C	B	C	C	D	C	C	A	C	B	B	D	C	C	C	C
HAWAII		B	B	B	C	B	B	A	B	C	B	C	C	C	C	C	C
IDAHO		B	B	B	C	B	C	B	C	B	C	C	C	C	C	C	C
ILLINOIS		D	B	D	B	C	B	A	B	D	B	C	C	B	C	C	B
INDIANA		B	B	C	B	B	B	B	C	C	B	C	C	C	B	C	C
IOWA		D	B	B	B	B	B	C	B	D	B	C	C	C	C	C	C
KANSAS		D	B	D	B	C	B	B	B	B	B	B	B	C	B	C	B
KENTUCKY		C	B	A	C	C	C	C	A	C	C	C	C	D	C	C	C
LOUISIANA		C	B	A	C	B	B	C	A	C	B	B	B	B	C	B	C
MAINE		B	B	B	B	C	B	B	B	C	B	B	C	C	C	C	C
MARYLAND		C	B	B	B	B	C	B	B	C	B	B	C	C	C	C	C
MASSACHUSETTS		C	B	B	C	B	C	A	B	C	B	C	C	C	C	C	C
MICHIGAN		B	B	C	B	B	B	B	B	B	B	B	C	C	C	C	C
MINNESOTA		C	B	B	C	C	B	C	A	B	B	B	B	C	C	B	C
MISSISSIPPI		C	B	C	C	C	C	C	C	C	C	C	C	C	C	C	B
MISSOURI		C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
MONTANA		C	B	B	C	C	B	C	C	B	C	B	B	B	C	C	C
NEBRASKA		B	B	C	B	B	B	C	A	C	B	B	B	C	C	C	B
NEVADA		C	B	B	C	B	B	C	B	C	B	C	C	C	C	B	B
NEW HAMPSHIRE		B	B	B	C	C	C	B	B	B	B	B	C	C	C	C	C
NEW JERSEY		B	B	B	C	C	B	B	B	C	C	B	C	B	C	C	C
NEW MEXICO		B	B	B	B	C	C	B	C	C	B	B	C	C	C	C	C
NEW YORK		B	B	B	B	B	B	B	A	C	B	B	B	B	C	B	C
NORTH CAROLINA		B	B	C	B	B	C	C	C	B	C	C	C	C	C	C	C
NORTH DAKOTA		D	B	B	C	C	B	C	A	C	B	B	C	C	C	C	C
OHIO		D	B	B	C	B	B	B	A	B	B	B	B	C	C	C	C
OKLAHOMA		C	C	D	B	C	B	B	B	C	B	C	C	C	C	B	B
OREGON		D	B	C	C	C	B	B	B	C	B	B	C	C	C	C	C
PENNSYLVANIA		B	B	B	C	B	C	B	A	C	B	B	B	C	B	B	C
RHODE ISLAND		B	B	A	C	B	B	A	A	C	C	B	C	C	B	C	C
SOUTH CAROLINA		B	B	A	B	B	B	B	A	B	C	B	C	C	C	B	C
SOUTH DAKOTA		B	B	B	C	B	C	B	C	B	C	C	C	C	C	C	C
TENNESSEE		C	B	C	C	B	C	C	B	D	B	C	D	B	C	C	C
TEXAS		C	B	B	C	B	B	C	C	C	C	C	C	C	C	D	B
UTAH		B	B	B	B	B	B	B	B	C	B	B	C	B	C	B	C
VERMONT		A	B	B	C	C	C	B	A	B	B	B	C	C	D	C	B
VIRGINIA		B	B	A	B	B	B	B	B	B	C	B	B	B	B	C	B
WASHINGTON		D	B	B	B	B	C	B	B	B	B	B	B	B	B	B	C
WEST VIRGINIA		A	B	B	B	C	C	C	B	B	B	B	B	C	C	C	C
WISCONSIN		D	C	C	B	B	B	B	B	C	B	C	C	B	C	C	C
WYOMING		B	C	B	C	B	B	C	C	C	B	C	C	C	C	C	C
DIST OF COLUMBIA	V	B	C	A	B	B	B	B	C	C	B	B	C	B	C	D	C
PUERTO RICO	OK	B	B	B	C	C	B	A	B	C	B	B	C	C	B	B	C

309 - 312 - FHWA RESPONSIBILITY  
313 - 314

75730

U.C. BERKELEY LIBRARY

Our association has long been opposed to this "10 percent penalty" feature, feeling that to penalize a State of its safety and highway construction moneys for noncompliance with another safety feature was a "rob Peter to pay Paul" concept at best.

The 35th Annual International Conference of AAMVA, held at the Statler Hilton Hotel in Washington, D.C., in December of 1967, adopted a resolution opposing this obnoxious feature of the 1966 Federal safety legislation. This conference was the AAMVA's first conference following the implementation of the 1966 Federal safety provisions. However, opposition to the 10-percent penalty provision has been reiterated by the AAMVA executive committee and by regional conferences annually since its initial passage and implementation.

We note that another provision under title 5 of S. 976 would require the Secretary of Transportation—not later than January 1, 1973—to amend highway safety program standard No. 2 to include requirement for a State motor vehicle registration and uniform certificate of title program similar to the registration program contemplated by the Uniform Vehicle Code, chapter 3.

The AAMVA has long been a supporter of uniform State-level systems of registration and certificate of title. Statements supporting these concepts are contained in chapter J of the AAMVA policies and position statements.

Our association also is a strong supporter of the concepts and model provisions contained in the Uniform Vehicle Code. In addition to being executive director of the AAMVA, I also currently am a member of the 5-man administrative committee of the National Committee on Uniform Traffic Laws and Ordinances, the policymaking body for the committee which publishes the Uniform Vehicle Code.

Mr. Chairman, AAMVA currently is working on a program in its vehicle services division which we feel will provide the procedures necessary to fully implement the titling provision envisioned in S. 976. I would like to, in closing, explain it briefly.

If S. 976 is enacted, Mr. Chairman, there still will be required specific procedures to implement the standards provisions—if a uniform system is to be the result. This is how AAMVA can help in making an effective system—and making it workable. AAMVA is not seeking merely a uniform registration and certificate of ownership procedures; but a system which will provide a family history on all vehicles—from the day they roll off the assembly line until the day that they are junked.

Action on this program has been underway for about a year; and we hope that the full program will be a reality before the end of 1971.

AAMVA's national registration and title workshop was held in mid-April in Dallas, Tex. At this national workshop, a resolution was enacted calling for the American National Standards Institute to develop a model uniform vehicle registration and certificate of ownership procedure.

This matter will be submitted to our AAMVA regional and national conferences in the next few months for what we feel will be routine adoption. Concurrently, we have gone to work on development of the system.

The American Trucking Associations, Inc., has agreed to joining AAMVA as a cosponsor of the American national standards com-

mittee. ATA also will be the secretariat. The procedures which we envision developing will be capable of implementing the systems outlined and prescribed in chapter 3 of the Uniform Vehicle Code.

Development of this model registration and certificate of ownership system will be closely related to development of a universal vehicle identification number. The uniform terminology necessary for development of the vehicle identification number has already been developed by a special subcommittee of the Society of Automotive Engineers (SAE), sponsored by AAMVA. Foremat for this terminology was recently issued as SAE standard J218. Once fully developed, the vehicle identification number—or VIN as it is popularly referred to—will be included on all automobiles, trucks, trailers, and recreational vehicles.

From the VIN and the uniform procedures for registration and certificate of ownership, we envision development of a uniform information system. It will tie together the various motor vehicle departments in the Nation. It will be a data net, utilizing a common data base so that the systems of the various jurisdictions can successfully be interfaced, for expeditious flow and exchange of information.

In addition, AAMVA contemplates development of a vehicle information record—or VIR. This VIR will contain information on the vehicle from the date of manufacture to the date of junking. It will be a "family history"—probably similar to that contemplated in S. 976.

Actually, Mr. Chairman, it appears that this could be—in essence—a master plan for implementation of the titling provision contemplated in this proposed legislation. And, I might add, there already has been great interest expressed by the National Highway Traffic Safety Administration for the development and implementation of this program.

A year ago, AAMVA hosted a workshop on the classification of vehicles for driver licensing purposes. The system developed by the State-level licensing administrators was adopted by the association's national conference and subsequently has been incorporated into the Federal highway safety program standard on driver licensing.

This, Mr. Chairman, we feel is the type of Federal-State relationship which you—the Members of the Congress—envisioned when you enacted the landmark highway and motor vehicle safety acts of 1966. Mr. Chairman, we contemplate this project in development of a model registration and certificate of ownership system as a similar project.

You probably are wondering when all this could come about; since I am aware that you, Senator Hart, have been critical of the pace of State safety action. Those working on the project have assured me that it can become a reality by the end of the this year.

Mr. Chairman, I thank you for this opportunity to comment on these proposals.

Good day.

Senator HART. Thanks, Mr. Spitz.

Admittedly we were considering several bills. It is hard in these hearings to question a witness on every issue raised about the several bills. Let me address a few questions to you at this point.

Let me focus first on this business of inspection. You questioned that feature of one of the bills we are considering which would separate the inspection activity from any repair or sale agency. Yet, I know that you and those associated with you in highway safety feel strongly

that there can be savings in both property and personal injury by a sound, effective inspection system.

We are in agreement on that. You caution also that there is a cost element if you go too far in trying to establish an independent, unrelated to repair business, kind of inspection center.

A couple of weeks ago, some of us went over not very many blocks away from here to the District of Columbia Diagnostic Clinic Inspection Center, and the identification of defects in a vehicle that they can achieve over there is very significant.

Now, I understand that the cost to them for the kind of diagnostic inspection that they make there runs \$2.87 a vehicle, and the technological advances in diagnostic systems continue appreciably. So I would anticipate the cost would go down rather than go up in the future.

If you measure that against what people have suggested is a \$7 billion annual savings in operating cost that can result in the elimination of the type of defects that they say diagnostic systems pick up, wouldn't you agree that if we could achieve that kind of consumer cost reduction at the cost of about \$3 a vehicle we should do it?

Mr. SPITZ. Yes, I would, if you could do it at \$3. It would depend upon the area of the country in which you are.

Senator HART. They do it for less than \$3. Isn't that exactly what we should be seeking?

Mr. SPITZ. Yes, I agree with you that we would seek this, if we can accomplish it at a reasonable cost. Money is the name of the game, let's face it.

Senator HART. Well, the District of Columbia generally is not heralded as the most imaginative or efficient governmental unit, but they have done it. So, let's crank up elsewhere. I think this legislation will help.

Now, another point you make, and it is a concern—you discussed it with us in the Antitrust Committee—is the business of preemption of standards. If the department fixes a standard, what does it do to the State that has tried to develop its own standard.

I am talking now about the standards that relate to property cost reduction. You counsel against a total Federal preemption. How would you react to a procedure under which a State could apply for a waiver comparable to the way we handle the vehicle emission standards in the case of California, showing why circumstances in that particular jurisdiction warrant still higher standards?

Senator COOK. May I interject?

Senator HART. Senator Cook?

Senator COOK. May I interject here, Mr. Spitz? If you could, would you, to the best of your ability answer at the same time how would you react to making these the basic standards, and anything greater on the part of any State would prevail rather than a waiver? In other words, these would represent the minimum standards and anything greater than these minimum standards would not be preempted, as you put it.

Mr. BROWN. Both Senator Hart and Senator Cook, yes, I believe the States would react very enthusiastically to such a provision. The point specifically that we were speaking to was the Maryland bill which I understand is a 5 miles per hour, front and rear, on the bumper, as

opposed to 5 and 2½ which the Federal standard envisions. The State of Maryland naturally is discourage. If they go to all the time and effort to formulate a standard on bumpers and then find out that they are preempted by something which is lesser by the Federal Department of Transportation, and I think a waiver such as you mentioned, Senator Hart, would be very acceptable.

Senator STEVENS. May I interrupt?

Senator HART. Senator Stevens?

Senator STEVENS. What are your thoughts on the producers? We seem to focus most of our attention on the consumer, but what of the producer who is trying to build a car that operates in 50 States then one State changes their standards contrary to the national standards?

For example, should we permit Maryland to bar the cars of Alaskans who come here because the State regulators feel that they need 5 and 5, when at the same time the national standards are set at 5 and 2½?

Mr. BROWN. Senator Stevens, you pose a very interesting observation there. But we at the American Association of Motor Vehicle Administrators have what we feel is an excellent rapport with the automobile manufacturers as well as with the Federal Government, people in highway safety, and we are confident that our administrators won't sell the auto industry down the drain as they won't sell the consumer down the drain who is entitled to a certain amount of highway safety, and that is as much as possible to save lives on the highway.

Senator STEVENS. I agree.

In my State, there is no antispin differential. You can be killed awfully quick on an icy road. We are likely to pass a bill to require that every car which comes into our State have antispin differentials. Yet, if you reside in Arizona and must pay for an antispin differential, it would be foolish. Somehow national standards must be differentiated from local guidelines.

From my understanding or your recommendations, I feel we are approaching the point of allowing the States to add to the burden, whereby the cost of vehicles imposed upon Alaskans, for example, to meet Maryland standards is going to be preposterous, and vice versa.

Mr. BROWN. I don't believe there is going to be a sufficient amount of vehicles registered in the State of Alaska coming into Maryland in the first place.

Senator HART. We skid in Michigan, too. I appreciate the exchange and I think it has helped us all. But admitting my prejudice, it seems to me to suggest that the middle ground is the prudent one, waiver, not preemption and not minimum.

Mr. BROWN. I think the waiver provision would probably be the most acceptable one to the AAMVA, Senator Hart.

Senator HART. I should compliment your association on the efforts that you are making that I was aware of and which I am glad you put on the record in pursuit of a uniform titling and car history pattern. It will serve the best interest of everybody.

Senator Cook?

Senator COOK. Mr. Spitz, I am interested in your remarks, because the State of Kentucky has an auto inspection program, as you know. It requires that the automobile be inspected on a yearly basis. It is charging, if my memory serves me, \$2. The law provides that no repairs could be made on a vehicle at the place it is inspected.

Now, doesn't that go a long way to close this loophole of a provision that no motor vehicle inspector may be certified by any State if he owns or receives any benefit in or from a business or enterprise engaged in the repair of motor vehicles, repair parts of accessories

I think just as much chicanery could ensue from a State inspector telling somebody where to have his car fixed, as from an inspector in private business telling someone where to go to have it fixed.

I am concerned about that because the automobile driver in Kentucky pays a rather substantial tax, a personal property tax, on his automobile. His license plates just increased considerably in price at the last legislature. He now pays an inspection fee. Obviously, the State legislature and the State government are going to attempt to pass the cost of a totally State-owned inspection system on to the automobile owner.

I am sure that this will come in the form of an increase in personal property tax to cover this cost, because unlike the District of Columbia, where it can be concentrated in a highly urban area, there are about four major areas in the State of Kentucky, and out of 120 counties there are about seven counties that should be classified as being urban, and there are about 113 counties that are extremely rural.

Even though there may be a provision by which this could be waived, I have a notion in some States in the Union there would be more waivers than there would be State-controlled inspection systems.

I would like to address myself to the fact that somehow or other I have a little problem saying that every inspector who inspects cannot repair the automobile, that somehow or other, he is a dishonest inspector because he has something to do with the repair business, and that as a result of our built-in attitude that he is dishonest, we are going to see to it that the State has to finance the entire inspection system.

I might say, I am on your side in this argument, and I want you to know it. I am just wondering why all of a sudden legislatively we should say that because there have been extensive hearings on the high cost of the repair of automobiles, that that should indicate that everybody who is in the business is dishonest.

There are some newspapers that I don't like, but I can't sit here and say every one of them in the United States is dishonest. I am just wondering if you would address yourself to this, because I think in essence what we are saying is we are building in a provision whereby we say there is nobody honest enough in the automobile business to inspect your automobile, even though he can't make the repairs under our law.

Mr. SPITZ. You are so right in your remarks, Senator Cook. Because over the years where some States have had an inspection program, then some citizen, concerned citizen, made an issue out of it because he was supposedly "taken"—well, given a bum deal instead of a \$10 repair he ended up paying \$100.

After a couple of years without inspection, they decided to go back to the inspection program and allow that man at that service station or that vendor to make the inspection and then also make the repair.

The people at the State level, though, are thinking as you are, Senator Cook. The small businessman is not all crook. Because of the small business we have a great Nation today and they are giving it

back to him. You might have one bad apple in the barrel as you may have one bad policeman, which doesn't make all policemen bad.

I must agree with you and my association agrees with you, that most of these vendors make a good inspection, they make a good repair and in most instances they are not overcharging.

Senator COOK. Would you have any objection provided that the inspection station making the inspection could not make the repairs?

Mr. SPITZ. Would I have an objection?

Senator COOK. If we could not see our way, for instance, in marking up a bill, if we could not see our bill compelling every State to set up a State inspection system, providing that an inspector at a particular location who made the inspection and who made a notification that repairs had to be made, would not be eligible to make those repairs, that they would have to be made at another location?

Mr. SPITZ. We would have no objection to that if the bill were to read that way.

Senator HART. I think the question is would you object if it was prohibited at the point of inspection.

Mr. BROWN. Would you repeat that, please?

Senator HART. I think I am trying to repeat Senator Cook's question.

Senator COOK. I will phrase it as easily as I can. Would you object if there was a prohibition against an inspector making the repairs if you did not have a totally, State-administered inspection system?

Mr. SPITZ. No.

Mr. BROWN. I don't believe that we would, sir.

Mr. SPITZ. Absolutely not. No, sir. We would not object.

Senator HART. That raises the same implication which I think it would be unfair for me to accuse Senator Cook of entertaining. It suggests that you can't trust a man to do both.

Senator COOK. Mr. Chairman, I hate to be caught in a double negative.

Senator HART. That is what the implication was with respect to my proposal.

Senator COOK. I hate to be caught in a double negative, but certainly the language of the bill says in effect that this cannot be done by anybody who is in the business, it cannot be done by anybody engaged in the repair or sale of motor vehicles, repair parts or accessories, which in effect says we don't trust you to do it.

Senator HART. Why don't you trust him to do this repair?

Senator COOK. I do, but also know the reality of trying to get a bill out of here and get it out of the majority side of the committee in this regard, and I am being honest enough to say that there will be some States that may find it rather difficult. Mine has tremendous rural sections and I am afraid we would be asking for more waivers than we would be asking for the establishment of the State system.

I will go a little farther. We would find it very difficult, I think, to finance a State inspection station in many parts of the State without requiring people from at least five, six, or seven adjoining counties to use the same location.

In some rural counties in Kentucky, as a matter of fact, when you live in the county, you have to go through two other counties to get back to the county seat in the county where you live.

This is just a reality. This is a reality of rural America. If you want to say that he has to go to a State inspection place which is

located in Hazard, Ky., and you live in Perry County, and you have got to go down through three other counties to get there, you are not talking about \$2. You are talking about a good half day off or better, and you are talking in some instances of traveling 40 and 50 miles to get there. This is increasing that cost a lot more than \$2.

Senator HART. Does anybody want to suggest, because the purpose of this hearing is to find out how to protect the consumer in this area, the appropriateness of mobile inspection stations for thinly populated areas?

Senator Cook. I have no objection to this as long as there is enough time lag between the time the mobile station gets there and the expiration date on the fellow's car—that he is not going to get tagged on the highway by a State policeman because the mobile facility hadn't gotten there.

Mr. BROWN. Senator Hart, you asked about the possibility of mobile inspection vans and things such as this.

To give you something parallel, most everybody that operates a motor vehicle has a driver's license, and we have been successful in developing some of our States that have rural areas such as Senator Cook has, such as Senator Stevens, Senator Moss, mobile driver licensing facilities, and I think this concept could very easily be adapted to the vehicle inspection.

But getting back to the original point, this is one of the reasons we raised a cost provision in the diagnostic inspection, because of remote areas like this and because in 23 of the States that have inspection programs at the present, they are State appointed inspectors, and we have got to rely on those people, and we have got to rely upon those people to make our inspection program workable, otherwise it is going to become so costly we might find some severe financing problem and the financing might in turn be passed along to the motorists, and if it is, this in turn would probably push the cost of the inspection up.

As you mentioned, it is \$2.87 in the District of Columbia, but with the possible exception of the State of Rhode Island, the District of Columbia is a unique place and one of three States that currently have State-owned inspection facilities.

Senator HART. I wouldn't burden the record, but it is my hope—belief actually—that this is an area where “better-late-than-never” a concentrated effort is being made to use the incredible technology that runs around loose to make much more effective inspections thereby reducing cost. Such technological advance begins, I guess, in Detroit, by designing cars in a fashion that makes the diagnostic inspection system easily applied and the readings easily made.

What we are trying to do is insure the automobile owner that he will be free of the chicanery that all of us understand is possible and be safe on the roads.

I don't know what other Senate offices have experienced, maybe mine is not typical because of the State from which I come and some of the hearings in which I have engaged, but consumer complaints about automobile repairs, top my complaint mail.

Mrs. Knauer of the White House staff I believe says the same thing about her mail, and you ought to check at the Federal Trade Commission. Without charging anybody with doing other than trying to

make an honest living effectively repairing cars, a lot of people aren't getting the product, and it is having negative effects upon our auto safety too.

So, these hearings are intended to develop a forum that will improve on that track record, and it is such a wretched record that even we should be able to help improve it.

Senator COOK. Mr. Chairman, may I just add to that, that I have no objection to the Commonwealth of Kentucky establishing a State-operated inspection system, but I would hope the chairman would also understand that not by the farthest stretch of the imagination, even if we have a complete and absolute State inspection system, that after the State inspector gets through and tells the individual what work is required on his automobile, that that individual still isn't subject to the consumer problems that are presented now, and have been presented to the chairman and to Mrs. Knauer and to the FTC, that when he goes to the individual repairman to have it repaired, he can still be gouged.

This paragraph in the bill is not going to stop that by any stretch of the imagination.

Senator HART. Nor is it advertised to, but it sure would help. That is one man's opinion.

Senator COOK. I would like to sit down with the Senator some day—

Senator HART. Next week, join us, we will have more explanations about the advantages and the safeguards that are built in by the kind of diagnostic inspection to which very few Americans have ever been exposed but which increasingly all of us should be.

Senator COOK. This is a good time for me to publicly say that I will be delighted to be here next week. It was my understanding that the Commerce Committee decided that all of these hearings would be held as a committee of the whole, and we find ourselves with so many other Commerce Committee subcommittee hearings simultaneously that have been scheduled by the staff, that it is very difficult to be able to be here all the time and try to play some part in these other responsibilities.

Senator HART. I share the problem, and it is not unique to you or me or this committee. It is one of the reasons the kids wonder if the system would work.

Senator Stevens.

Senator STEVENS. Do I understand that your VIN and VIR system can be established without the necessity of Federal legislation?

Mr. BROWN. Yes, sir, Senator. We anticipate that it will be established on the basis of a uniform vehicle identification number. Yes, we are anticipating it within the year.

Senator STEVENS. Will that cover merely new vehicles constructed after this year, or will it dateback and include the history of existing vehicles? What is going to be the scope of it? From your statement, I can't quite grasp its scope.

Mr. BROWN. I believe, if I understand it correctly, that it will be initiated with new vehicles. However, I will consult with the people on our staff who are responsible for this program and submit an answer for the record.

(The following information was subsequently received for the record:)

The vehicle identification number (VIN) and vehicle identification record (VIR) programs will be applied only to new vehicles.

Senator STEVENS. You say :

It will be a data net, utilizing a common data basis so that the systems of the various jurisdictions can successively be interfaced for expeditious flow and exchange of information.

By this, do I understand you are going to establish a system whereby all new vehicles would have the same data. In order to transfer those vehicles, additional new data of the new purchaser would be added to the base. Therefore, there will always be a continuous registration, you might say, showing a family history of the two vehicles after this year?

Mr. BROWN. Well, everything will be based on this uniform vehicle identification number, and this will be the basis of the system, sir.

Senator STEVENS. I think the chairman has indicated his desire to establish this family-ownership concept so that a purchaser is aware of its previous owner. For example, if some salesman says that a sweet little old lady whose husband has been in jail owned the car that nobody has abused it—the purchaser could check up on that. Is this going to be possible under your system?

Mr. BROWN. Yes, sir. That is the vehicle identification record, Senator Stevens. The vehicle identification number will be the basis for identifying each vehicle in this model registration and certificate of ownership system as we envision it, and this will go to make up this vehicle identification record which will have track of the automobile based on its vehicle identification number from the day it rolls off the assembly line in Detroit or wherever it rolls off to the date it is ultimately junked.

Yes, we will know if a little old lady or who specifically has owned the vehicle, if it has been in an accident, and any information such as this. And if all of our systems can be successfully interfaced we can find out in a hurry. If you are in your home State of Alaska and the vehicle comes from Senator Hart's or Senator Cook's home State of Michigan or Kentucky, we can communicate with this data as we envision it.

Senator STEVENS. Do you foresee that motor vehicle registrars will keep this information and share it on request or will it be listed? In other words, if one of Senator Hart's constituents sells a car to one of my constituents and it is then registered for the first time in Alaska, will the Alaska registration indicate previous ownership or will this data be available upon request?

Mr. BROWN. I believe it will be available if you ask for it. I don't believe it would show. However, once again I am not that specifically familiar with the system.

Senator STEVENS. Thank you. Thank you very much, Mr. Chairman.

Senator HART. Senator Cook.

Senator COOK. You really will have to have two identification numbers, won't you? You will have to have car identification and you will also have the license identification? For instance, in the Commonwealth if you sell your automobile, your license plate stays with the automobile. In several States your license plates are yours for the year. You are going to have to make a distinction between an automobile number and a license number for the purpose of police identification, et cetera, aren't you?

Mr. SPITZ. Yes.

Mr. BROWN. Yes, sir. The license number would be a part of the record, but the one common thing throughout the whole system will be this vehicle identification number which identifies that particular vehicle.

Senator STEVENS. In real estate, for instance, you always have a back reference. Is this part of your vehicle identification, or is this merely in the master records and not in the records that go with the title itself?

Mr. SPITZ. This would be in the master records, Senator.

Senator COOK. I might add we have another statute in the Commonwealth which provides that any problem that occurs to an automobile that was previously a cab and the buyer has not been specifically notified that this was a cab, that all of those repairs will frankly suffer to the benefit of the guy who sold an automobile and didn't give written notice. I think this is something that should be given consideration.

Here you have a group of vehicles that get out on the road after a year or a year and a half with 80,000 to 90,000 miles, and when you get through with them you think they have come from the little old lady with tennis shoes. I wonder if you have given any consideration to specific identification of the separate types of vehicles that I would say have been ridden hard and hung out wet? Do you have any of this in your vehicle identification program?

Mr. SPITZ. I believe this is part of the program that the committee is now working on. They are considering all these things that you are mentioning here, Senator.

Senator COOK. Thank you, Mr. Chairman.

Senator HART. Senator Moss.

Senator MOSS. I have enjoyed listening to the exchange and I haven't any specific questions. I just wanted to volunteer one observation. Whenever we have to set up a regulation of any sort, it doesn't mean we are accusing everybody of being a crook. Otherwise, we wouldn't have any larceny lawyers or anything else. So a regulation to catch those who do transgress the proprieties, of course, you can say affects the others, but that is one thing we have to suffer in order to give protection to the consumer.

So this idea that Senator Cook's State has is not a bad idea, that the fellow who makes the inspection doesn't also get to do the repair on the car, because there is where we have had a lot of abuse. Maybe the State system isn't the way to go, but we need some kind of protection there, and what we are looking out for is the consumer, the fellow on the end who doesn't know about his car. We are completely helpless, 90 percent of us, 95 percent of us maybe, with a car. If the thing isn't running well, we go in, and we don't know. We are just in the hands of the fellow who makes the inspection and says you need so-and-so. Pretty soon he has put a lot of things on there that we find out later in some other way that we didn't need at all.

Mr. SPITZ. You may be assured, Senator Moss, we appreciate your thoughts and we shall continue to work with Senator Hart's staff in this respect.

Senator MOSS. Thank you.

Senator HART. Gentlemen, thank you.

Next we are going to hear from spokesmen for large insurance buyers who are members of the American Society of Insurance Man-

agement, and we welcome the counsel for the American Society, Mr. James E. Bailey, and Mr. William Mortimer, of Norton Simon, of New York, and Robert Frederickson, of United Airlines.

Particularly, I welcome Mr. Bailey, with whom I labored on another committee for a long time now. It is a pleasure.

**STATEMENT OF JAMES E. BAILEY, COUNSEL, AMERICAN SOCIETY OF INSURANCE MANAGEMENT, INC.; ACCOMPANIED BY WILLIAM MORTIMER, DIRECTOR OF INSURANCE, NORTON SIMON, INC.; AND ROBERT M. FREDERICKSON, MANAGER OF CLAIMS, UNITED AIRLINES**

Mr. BAILEY. Mr. Chairman, it is a privilege and a pleasure to be here. I have been a staff member of both committees for a number of years.

This morning I have with me two distinguished insurance buyers who are representatives of our group. One is a former national president, Mr. William Mortimer, who is on my left, who is now with Norton Simon of New York. He will have a short statement to present on his own, not as a representative of our organization, however.

The other gentleman, Mr. Frederickson, represents United Airlines in Chicago. Both these gentlemen are responsible for the expenditure of premium dollars running into the many millions in the case of United and Norton Simon.

I have a very short statement. It consists of three things. For the committee members, a roster of our membership is attached. I would call attention to the chairman of the fact that he will find our Detroit chapter members listed alphabetically in this brochure. We do not have members in Kentucky, Alaska, or in Utah in sufficient number to have a chapter designation. Some are at-large members and others are members that have plant facilities within the State but have their membership in another location.

The second part of the statement is a reprint from our magazine called Risk Management of an attitude survey which was taken on no-fault and published at our conference in February.

I think that the survey will be of interest to the committee. However, it should be pointed out that of the 1,910 questionnaires that we sent out, only 299 were returned, and, as a result, we consider that was not definitive of our total membership but that the responses would speak for themselves as the attitudes of the members who returned the questionnaire.

Now, Mr. Chairman, I will turn to my prepared statement.

Mr. Chairman, members of the committee, my name is James E. Bailey. I am a member of the District of Columbia Bar with offices at 1030 15th Street NW., Washington, D.C. I make this statement as the retained counsel, representing the American Society of Insurance Management, Inc., 500 Fifth Avenue, New York, N.Y.

The American Society of Insurance Management—known as ASIM—is the largest nationally organized group of insurance consumers in the United States. ASIM's current membership consists of more than 1,860 corporate consumers, with more than 2,800 risk management personnel, who are divided among 43 chapters in the United States and Canada.

In total aggregate premium dollars, for all types of insurance, including workmen's compensation, our members spend in excess of \$8.5 billion annually to cover the insurance needs of American industry.

My appearance today was authorized by the executive committee of ASIM and its vice president-legislation, Edward P. Lalley, insurance manager, Kraftco Corp., New York City.

Our membership has been very much concerned over the entire question of no-fault. Our members have carefully noted the developments over recent years. Our two Massachusetts chapters did not oppose the no-fault legislation which was enacted last year in their State.

The subject has been of such importance that 1,910 questionnaires were prepared and sent out to our corporate members to obtain the attitude of our managers toward this important automobile insurance problem. A total of 299 questionnaires were returned expressing their personal opinions—that was a 15 percent response.

Of those answering, the responses favored supporting the principle of no-fault insurance in general, but did not favor this as a complete substitute for tort law liability. Rather, those answering thought ASIM should support legislation substituting no-fault for certain types of loss up to certain monetary limits with tort law concepts beyond that.

I have commented earlier on the insufficient number of questionnaire results to constitute a firm position either for or against no-fault, and I do not represent that we are in favor of or necessarily opposed to no-fault.

Our members were in close agreement in opposing the concept of absolute liability for commercial vehicles, such as the Stewart proposal in New York, and they were also opposed to having a percentage of responsibility assigned to commercial vehicles for economic loss on either the vehicles, the number of axles or any other such basis that may be desired.

Our membership is strongly opposed to discriminatory treatment affecting operators of commercial vehicles. Testimony to that effect has been offered in several States prior to my appearance here today.

It is our considered opinion that when the Senate Committee on Commerce considers this legislation, it should delete any provision imposing absolute liability on commercial vehicles on any basis.

None of the information used to substantiate the Stewart proposals and that of the Department of Transportation is persuasive to us. It is at best speculation and is not grounded on fact. In our opinion the legislation should not attempt to make such a classification because we feel it would be subject to attack on the ground that it is unconstitutional because it fails the test of the equal protection of the laws provisions contained in the Constitution.

The reasons which have been suggested for such discriminatory action present an illogical situation. It leaves a large segment of the area which the change seeks to reform. We do not believe that it is adequate to reform part of the situation and leave part of it unreformed.

I should like to comment briefly on the situation respecting the integration of benefits from two or more insurance coverages. With the adoption of a no-fault system, auto insurance would become mandatory coverage on a first-party basis. There should be an intelligent integra-

tion of benefits of this coverage and all other coverages which would also respond to provide reimbursement for the economic loss so suffered. It is being given careful and serious consideration by the House Committee on Interstate and Foreign Commerce.

Recently Representative Moss submitted a bill which excluded the provisions for absolute liability, and we are presently submitting that to our membership and it may be that in the future we will be able to take a more definitive position on this question of no-fault legislation.

Considerable discussion is also heard on the question of a Federal presence in this particular problem area. Secretary of Transportation John Volpe and other witnesses have indicated they have no objection to Federal standards being imposed upon the States which must be complied with.

ASIM would prefer the continued regulation of insurance under State jurisdiction, but we do not find it inconsistent to suggest minimum Federal standards to assist in a solution of the chaotic conditions which would affect interstate operators and vehicle owners in attempting to comply with different versions of no-fault legislation in adjacent or other States in which they must operate. It is ASIM's position that such Federal standards would be helpful as guidelines for the States and that regulation under such guidelines would continue to be a State function.

Under present no-fault proposals very little consideration is given to including claims for property damage. Again, we would like to suggest to the committee that there appears to be no logical reason for covering bodily injury claims under the no-fault concept and excluding claims for property damage.

We know of no logical reason for this difference of treatment. We respectfully suggest that if the principle of no-fault is appropriate and proper for bodily injury claims, it should also be proper for claims for property damage.

With reference to the legislation pending before the committee affecting the mass marketing of personal lines insurance, including automobile, it has long been a policy position of our legislative committee that it favors having access to all markets and being able to buy whatever type of insurance is desired freely and without restrictions.

We have consistently opposed restrictions imposed by some States in the sale of so-called mass merchandising plans.

ASIM risk managers are always concerned with the prevention of losses. It has generally considered that constructive efforts in this area could include its application to so-called design standards or safety standards for vehicles. It should be noted, however, that we have not affirmatively adopted that policy.

In summary, the American Society of Insurance Management is strongly opposed to any type of discriminatory treatment imposing additional liability upon commercial vehicles, adopts needed minimum Federal standards to obtain some degree of uniformity throughout the States which would aid the operations of our interstate companies, believes in a system of intelligent integration of benefits under no-fault auto insurance and all coverages which would also respond to provide reimbursement for the economic loss so suffered, and urges the com-

mittee to give equal treatment under no-fault for bodily injury claims and claims for property damage.

Mr. Chairman, I thank the committee for the privilege of appearing here today.

Senator HART. Before hearing from Mr. Mortimer, I read your testimony as urging that the States continue to play the role of the regulator of insurance but you see no inconsistency with that objective if the Congress was to establish with respect to no-fault legislation Federal standards; do I interpret correctly your position?

Mr. BAILEY. Yes, Mr. Chairman, you do. We testified here previously on the Federal Guarantee Bill, as you recall, before Senator Moss, and our position was consistent with what was stated today as far as State regulation is concerned. We think that Federal standards will aid our operators, we think it will provide a degree of uniformity where it left to the States to pass many different conflicting no-fault plans we may be at a serious disadvantage for those companies which operate in a multiplicity of States.

Senator HART. I am delighted that Mr. Mortimer intends to give us a statement of his own. I would like to say for the record that Mr. Mortimer has indicated in his role as a national leader in the field an intense desire to separate the myths from the realities with respect to this volatile subject matter and has given very constructive leadership. I am delighted that you are here.

Mr. MORTIMER. Thank you very much, Senator.

Mr. Chairman, members of the committee, my name is William S. Mortimer. I am making this statement as a concerned citizen who has been involved in the automobile insurance industry for almost 25 years, 18 years of which have been working on the side of the consumer. I have worked as a consultant and as an insurance or risk manager for two large U.S. corporations. I have also been active in the American Society of Insurance Management for a number of years and was national president in 1969 and 1970.

Twelve years ago I reached the conclusion that the tort system was not solving what I considered to be the major problems arising out of serious automobile accidents, which is the prompt and adequate payment to the accident victim. I consider the tort system a slow, expensive, wasteful, and unfair system. The automobile insurance consumer can no longer afford a system which requires \$2.50 to pay a dollar in benefits, particularly when these benefits themselves are increasing in cost so rapidly; nor can he afford to wait months for this capricious system to pay him inadequately or if at all when he has a serious problem.

Society itself can no longer afford the misdirection of automobile insurance payments so that the most seriously injured are so inadequately indemnified for their loss that a majority of them become partly or wholly dependent upon society to care for them and their families after they have been involved in an accident.

The insurance industry, whether they realize it or not, can no longer afford to provide insurance to cover the tort system because they are pricing their product out of the reach of a rapidly growing number of their customers. These, their customers, are rebelling against increases.

Further, the insurance industry has many problems, but without a doubt the automobile insurance problem is the greatest one. It is of

such magnitude that they must solve it or they will not be able to solve their other problems. And it cannot be solved by continuation of the tort system. Even the large corporations can no longer afford the tort system.

We need a strong, viable insurance industry to provide insurance and service to us. We do not have one primarily because the insurance industry is now directing most of its managerial talents to try and solve the automobile insurance dilemma while it continues to waste its assets providing insurance to cover the tort system. Who can afford such a system? Only those few who are profiting greatly from its inherent waste and inefficiencies and who are now speaking loudest for its continuation.

What is the solution? Even those who favor its continuation agree that it is not working well. They suggest a streamlining, but they still end up with a system where most of those who suffer serious injuries will be inadequately protected. The only way to protect the seriously injured is the purchase by each individual of a complete insurance program to cover their own economic loss. Their solution is for the consumer to spend even more for insurance than he is presently paying. The people will not favor any change which only requires increases in their insurance cost. This cannot be the answer to the problem.

There has to be a change, and Senator Hart's bill will provide the needed change. I also wish to say that I strongly favor a Federal bill because I think that it will be impossible to have a workable no-fault program if each State sets up its own bill. It will work a tremendous handicap on not only the large corporations but the individual as well if they have to comply with 50 different laws.

I believe that the opponents will be able to find a rearguard action in each and every State so that meaningful change would be many years away. I favor State administration of the necessary insurance that each car owner would need to comply with the Federal bill because it can be effectively administered at the State level.

My position on discrimination against the operator of the large vehicle has been well stated by Mr. Bailey. I also favor the inclusion of property damage under the proposed bill as much of the same waste is present in trying to get the courts to determine fault in a property damage case as it is in a bodily injury case.

In conclusion, I wish to make these six points.

(1) Society, individually and collectively, cannot afford to continue the tort system.

(2) The only ones who understand the problem and still favor it are those with a special interest to protect. Their position should be largely discounted.

(3) There is no way to continue the tort system in automobile insurance and solve the problem of properly paying the injured victim without a doubling up in cost.

(4) The Hart bill is by far the most comprehensive and workable that has been suggested and should be vigorously supported by all people.

(5) A Federal bill with State administration of the necessary insurance would be the most effective way to make this badly needed change work properly.

(6) The law should not discriminate against any individual or group.

I thank the committee for the opportunity of making my thoughts today on this very important subject.

Senator HART. Mr. Mortimer, for the record and for the benefit of all of us who will study that record and at the risk of forcing you to be immodest, will you state your background more fully than you did at the outset?

Mr. MORTIMER. I started in the insurance industry as an agent for a large company. I was involved in insurance agencies for about 4 years in that period of time. I was fortunate to be able to go back in the Navy during the Korean war but more fortunately ended up as an insurance specialist for the Office of Insurance and Navy Materiel in Washington.

After that I spent time as an insurance consultant to the Chief of Army Ordinance. Then, I joined a consulting firm which had approximately 600 clients throughout the country acting as more or less the insurance expert in their insurance problems.

I spent a year and a half with a large insurance brokerage firm. After that I spent 3 years with Douglas Aircraft, and have been with my present employer since 1961.

Senator HART. And briefly describe your present employer, Norton Simon.

Mr. MORTIMER. First, I would like to make clear I am not speaking for my present employer. I am speaking only for myself and a substantial number of my counterparts who would like to have something that approximates what I said put in the record.

My responsibility with my present company is the avoidance whenever possible of loss by effective safety provisions, safety programs, property conservation techniques, the development whenever possible of means of avoiding to buy insurance where we can obtain the service elsewhere. This does not mean I am against the function of insurance, because it is a very vital one to my company and to myself in carrying out my job.

And lastly, I am responsible for the purchase of such insurance as we need to protect our assets, our earning power or to provide service for us in conducting our business.

Senator HART. Before asking questions, I suggest we inquire whether Mr. Frederickson has a statement to make.

Mr. FREDERICKSON. Mr. Chairman, I have no statement. I am here with Mr. Bailey and as a member of the American Society of Insurance Management.

I do wish to state we are in entire agreement with his argument and we support this no-fault principle.

Senator HART. Are we to assume that United Air Lines has automobiles as well as airplanes?

Mr. FREDERICKSON. They have. Not as many, but they do.

Senator HART. Senator Cook?

Senator COOK. Mr. Bailey, I noticed from the attached ASIM survey that your organization, at least under my interpretation, favors the no-fault concept with monetary limits, and that a majority of your members that answered the survey showed a preference for those monetary limits somewhere in the vicinity of \$5,000.

Mr. BAILEY. That is right.

Senator COOK. They felt the no-fault concept monetary unit should apply to hospital costs, vehicle loss and damage, other property damage, which you discussed this morning, loss of wages and other miscellaneous expenses, but as to applying the concepts to pain and suffering, and death and dismemberment, that they were kind of even.

Mr. BAILEY. That is true.

Senator COOK. Mr. Mortimer talked to this point. I am sorry, I can't get all my names in line and I apologize.

I am interested, and I think I rather agree, that your association takes a strong stand against absolute liability for commercial carriers and not only do you take this probably from a very selfish standpoint but also from a constitutional standpoint.

Mr. BAILEY. That is right.

Senator COOK. I might say to you that I think there is merit to your constitutional standpoint.

Mr. BAILEY. Thank you, Senator Cook.

Senator COOK. So, not only do I think they disagree on the merit of their own position but I think they have a good point in disagreeing on the standpoint of being discriminated against in regard to their constitutional rights.

Mr. Chairman, I have no other questions. I didn't even ask a question. I think I kind of summed up part of it from the ASIM and find this very interesting.

I am wondering if it would be possible, Mr. Chairman, for this association with its tremendous impact on the industry, if there is some way that we could conceivably consider, with the publicity that obviously these hearings will engender, polling your organization again.

Mr. BAILEY. We would be very glad to appear at any time and render any assistance that we can or get additional information if the committee so desires.

Senator COOK. I notice that you present something that is not presented in the bill in any way, and that is your organization was not in conclusive agreement about the limit on loss of wages, that they had a preference of a thousand dollars, but they also suggested that it should be a percentage of wages such as two-thirds or 70 percent.

Now, this could get well above a thousand dollars if the results of the poll were not that there should be a cutoff of loss of wages up to a thousand dollars a month but that it be a percentage such as I indicated just now.

I know it would be a lot of work to your organization, but it might be helpful to make some type of determination as to how they might feel after these hearings, and a summation of what these hearings have deduced which I am sure your organization will present to your membership.

Mr. BAILEY. We will do that. I feel certain if the committee wants some more results to the question, we will be able to cooperate with you.

Senator HART. You were nice enough not to ask us to fund the mailing cost.

Mr. BAILEY. The mailing cost isn't that great, actually.

Senator HART. Senator Stevens?

Senator STEVENS. I have no questions, Mr. Chairman.

Senator HART. Gentlemen, thank you very much.

Now, we welcome the president of the National Association of Mutual Insurance Agents, Mr. Robert V. McGowan.

Mr. McGowan is accompanied by the chairman of the association's Federal Legislative Steering Committee, Mr. Lee E. Walton, and its director of government affairs, Mr. George Potts.

**STATEMENT OF ROBERT V. MCGOWAN, PRESIDENT OF NATIONAL ASSOCIATION OF MUTUAL INSURANCE AGENTS, INVESTMENT BUILDING, WASHINGTON, D.C.; ACCOMPANIED BY LEE E. WALTON, CHAIRMAN, FEDERAL LEGISLATIVE STEERING COMMITTEE; AND GEORGE G. POTTS, DIRECTOR OF GOVERNMENT AFFAIRS**

Mr. MCGOWAN. Thank you, Senator.

Mr. Chairman and gentlemen of the committee, my name is Robert V. McGowan of North Attleboro, Mass. I am the owner of the R. V. McGowan Insurance Agency, Inc., in North Attleboro, which I founded and have operated since 1954. I am also the current president of the National Association of Mutual Insurance Agents, an organization of more than 18,000 independent property and casualty insurance agents with members in nearly all 50 States, and with headquarters in Washington, D.C.

Accompanying me here today are Lee E. Walton, the immediate past president of our association, of Jackson, Mich., and chairman of our Federal Legislative Steering Committee, and George G. Potts of Washington, D.C., our director of government affairs.

Mr. Chairman, I would like to summarize my statement, and I would also request that our complete statement, which has been given to you be entered in the record.

Senator HART. Mr. McGowan, without objection it will be printed in the record in full.

Mr. MCGOWAN. It has been reported that nearly 70 percent of the property and casualty insurance written in the United States is handled by independent insurance agents. That figure suggests at least two important and related ideas: That we have almost constant contact with a large majority of the insurance-buying public; and also that we have firsthand feedback of their views on what is good and what is bad about our business.

I cannot overemphasize the influence that this knowledge has had in defining the position of our association on the matter of automobile insurance reform legislation which is before this committee, and which I am privileged to bring to your attention at this time.

On previous occasions at House and Senate hearings there have been implications, as well as testimony, challenging the need for implications, as well as testimony, challenging the need for the services of the agent in the marketing of automobile insurance. This proposition is completely unknowing and irresponsible.

The independent agent is deeply concerned with seeking meaningful solutions to automobile insurance problems. In the final analysis, the insurance business is a business of trust, principally because of the intangible nature of the insurance contract, and the independent agent who sells and services that contract indeed becomes the contract himself.

On that basis, I hope I am not being too presumptuous when I say there is probably no one in this room today who recognizes the need for change in our present system of compensating auto accident victims more than the independent insurance agent. However, it is just as true that there are widely differing views in this room as to the degree and the means of bringing about that change.

For example, S. 945 calls for the complete abolition of our present tort liability system in favor of a "pure" no-fault system. Moreover, this proposal in effect would turn over regulation of the automobile insurance business to the Federal Government. The National Association of Mutual Insurance Agents unalterably opposes these concepts.

It seems to us that to do away with the tort liability system and replace it with a completely different and untested concept which all the States must adopt almost immediately is to invite chaos. A more prudent approach we think would be to begin on a limited basis and permit the system to change in an evolutionary manner.

I would like to propose to you a program which our association earnestly believes can go a long way toward solving the present automobile insurance problems. Entitled "motorists insurance—protection plan," we recommend it be given careful consideration by this committee.

This plan is a comprehensive package of legislative proposals to be enacted at the State level. It is designed to provide speedy, automatic basic injury compensation for all auto accident victims, and to afford the greatest possible protection for the Nation's motorists by implementing stringent driver and highway safety measures and improving the present legal system.

I would like now, Mr. Chairman, to concentrate on section III since it is perhaps the real heart of our proposed program. It provides for some significant changes in our present system for compensating auto accident victims, but with a minimal disruption of the important tort liability concept.

Under the plan, every automobile liability insurance policy covering any nonfleet private passenger motor vehicle would include the following minimum benefits, payable immediately regardless of fault:

- (1) Medical and hospital expense coverage up to \$2,000, subject to an optional \$250 deductible;
- (2) Disability coverage of 85 percent of gross income lost, commencing 30 days after the accident and continuing for 52 weeks and subject to a \$500 per month maximum or a total of \$6,000;
- (3) Uninsured motorist coverage of at least \$10,000 per person and \$20,000 per accident; and
- (4) Accidental death benefits of at least \$5,000 when the death is a direct result of the accident.

However, the policyholder would have the right to reject the automatic coverages listed above for himself and members of his family. Where a guest passenger is concerned, these coverages would not apply if they were provided under his own auto insurance policy.

As independent agents who come into daily personal contact with insureds who are victims of automobile accidents, we are well aware of the value of a system, which would provide for immediate and automatic payment of basic personal injury benefits, regardless of fault.

Again, however, we do not propose that the purchase of such cover-

age by the policyholder be mandatory. Many of the proposals which are now, or will be, before this committee seek to force all motorists to purchase these first-party coverages as a condition to being permitted to operate a motor vehicle.

By offering our limited no-fault plan on an either-or basis, we feel we are preserving the individual's freedom of choice. He is free to buy either an auto insurance policy with no-fault provisions, or he can reject the no-fault coverages and purchase the automobile insurance policy he has always had.

The entire area of damages for pain, suffering, and inconvenience has been a major subject of debate for years, Mr. Chairman. Critics of such awards claim that there is a tendency to overdramatize and exaggerate automobile accident injuries in order to collect the largest sums possible.

While we agree that automobile insurance costs could be lowered if the recoverable damages for pain, suffering, and inconvenience were in some way reduced, we cannot go along with those who would abolish such recoveries altogether. On the contrary, we believe that pain, suffering, and inconvenience are a very real and important part of the determination of damages in personal injury cases and should continue to be compensable for all such victims.

A person who suffers such injuries as the result of the carelessness or intentional conduct of another, sustains a loss as real as the hospital and medical expenses he incurred. Money cannot replace a lost limb or eye but there is simply no other measure yet devised.

Accordingly, we feel that some objective criteria should be established in determining this issue and it should be subject to reasonable limitations, especially in the less serious cases. Thus, our proposal suggests the following standards for pain, suffering, and inconvenience be adopted for all motor vehicle accident cases:

Up to 50 percent additional damages when medical and hospital expenses amount to \$500 or less;

Up to 100 percent additional damages when medical and hospital expenses exceed \$500.

In cases of death, permanent disfigurement, loss of limb, permanent loss of a bodily function and other exceptional circumstances, these standards may be raised by the court.

Until a better means of determining such damages is conceived, we believe these standards will prove fair and equitable to all concerned, and will at the same time provide reasonable safeguards against those who would attempt to profit from such injuries.

Mr. Chairman, the broad package of proposals we have made here is offered as a balanced blending of the various points of view on how best to improve our existing automobile insurance reparations system. It encompasses what we believe to be the best features of many of the proposals being made.

A virtue of our program is that it will allow for a major step forward without burning our bridges behind us. Moreover, it allows for future testing so that we may observe and evaluate public acceptance without losing the desirable features of the present system and without being committed to an irrevocable course. We offer it as a sound, evolutionary approach to improving the auto insurance reparations system.

U.C. BERKELEY LIBRARY

And now, Mr. Chairman, I would like to offer to this committee what our association feels is the most plausible method for implementing our program.

In the first place, it should be emphasized that we firmly believe that such a program can and should be implemented at the State level. We agree with Secretary of Transportation Volpe that the "sense of the Congress" be "subject to the admonition \* \* \* that the Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation," and that operation and regulation of the automobile insurance business should continue to be by the private insurance industry at the State level.

However, we disagree with the Secretary and others who apparently feel that a national pure no-fault automobile insurance system is both desirable and inevitable. To the contrary, we see no concrete evidence that such a system is in the best interest of all concerned, particularly the insurance-buying public. We believe that the public does not really want a virtual elimination of the present tort system in favor of pure no-fault. What it does want is change for improvement—and that is what we offer here today.

Accordingly, we suggest the following four-step approach:

(1) The Congress should adopt a concurrent resolution expressing its intent that the States enact, no later than July 1, 1974, legislation establishing a private industry-administered and State-regulated automobile insurance reparations system built upon certain of the principles enunciated by the Department of Transportation study and embodying all of the features of our program.

(2) Interested organizations—such as the Council of State Governments, the National Association of Insurance Commissioners, and the various insurance organizations, including our own—should be encouraged to work together to draft model legislation based on the "sense of the Congress" as a guide to the States in developing their statutes.

(3) The Department of Transportation should be directed to monitor State actions and to issue periodic reports analyzing the progress being made by the States.

(4) On or after July 1, 1974, the Department of Transportation should submit to the Congress a complete report on action by the States in adopting such an automobile insurance reparations system by statute, so that the Congress may be in the best possible position to take whatever action it deems necessary and appropriate at that time.

In adopting a concurrent resolution, we suggest that the Congress give careful consideration to the general approach contained in Senate Concurrent Resolution 23, but with appropriate modifications that would reflect the approach we have outlined to you here today.

As president of the National Association of Mutual Insurance Agents, I pledge the complete support of my association in any and all endeavors to enact such a program in every State by 1974.

I urge, Mr. Chairman, that this pledge not be taken lightly. Our association made a similar promise some 17 months ago to this same committee in connection with a proposal to establish the Federal Insurance Guarantee Corporation. In the intervening months, efforts by our association and others have resulted in passage of insolvency

laws in some 33 States to date, and we are continuing our efforts in the remaining State legislatures.

This proposed approach, Mr. Chairman, would in our opinion achieve the basic goal of establishing an improved automobile insurance reparations system throughout the country; but at the same time it would preserve the traditional roles of the States and the private insurance industry. Equally important, moreover, it would allow the Congress of the United States to fulfill its responsibility to the American motoring public.

Much has been said about the advantages of a Federal program over programs developed and regulated at the State level. Emphasis has been put on the efficiency and economy of uniformity, on the need for prompt action, and on the record of the States in comparable undertakings such as Workmen's Compensation. Certainly there is something to be said for these arguments, but in my judgment the record of the States, for the most part, is favorable when all factors are considered.

The Congress in its wisdom in 1945 passed Public Law 15, better known as the McCarran-Ferguson Act, which left the matter of insurance regulation to the States, subject to some restrictions. Since that time, the field of regulation has been a changing, evolving phenomenon for the States. But while these changes have been taking place, the industry has continued to function soundly and properly. And the regulation of our industry by the States has maintained a level of effectiveness at least equal to that of any comparable industry.

On the other hand, during this same period, the Federal Government has had the opportunity to perform in the fields of medicare and welfare—both somewhat related to insurance. I would suggest with all respect that the Federal performance has not proven superior in these fields.

We believe that the State approach to regulation of an industry such as ours is preferable because it is flexible and responsive to geographic and individual needs; an opportunity for research, for innovation and trial and error.

The important thing is that if one of the 50 States undertakes an experiment and fails, it has not brought the whole country down with it. If, for example, the Massachusetts no-fault experiment is successful, we have a good foundation on which to build for the other States. If it is not, we have the opportunity to adjust to the mistakes that may have been inherent in that program.

Of equal importance is that the insurance industry, under State regulation, has been free to adjust at the local level to needed innovations brought on by a constantly changing economy and population.

Existing automobile insurance policies are universal in concept. In my own State of Massachusetts, for example, today one buys an automobile insurance policy that takes care not only of the statutory requirements there, but all the requirements of the other States as well. Thus, although the States often have requirements peculiar to each, the policyholder who purchases his insurance in Massachusetts has a policy which will meet the requirements of, say, Texas, should he be involved in an accident in that State.

If State regulation of insurance is operating satisfactorily, as we contend, you might very well ask then why you are receiving com-

plaints about policy cancellations, high premiums, or improper attention to claims. We do not suggest they be taken lightly. They are terribly important. As professional agents we have as great a concern as you for the welfare of these people. Most of them, after all, are our clients. But I submit that the criticism of our industry, considering its tremendous exposure to an enormous number of consumers, may very well be moderate. May I suggest that criticism aimed at drug companies, automobile manufacturers, the railroads, the Post Office—these too have been subject to heavy criticism, especially in recent years.

There is a further aspect of this question of State versus Federal regulation. Takeover by the Federal Government of regulation of the automobile insurance business can only be followed ultimately by the redirection of State insurance premium tax revenue to Washington. How long will the very philosophy that suggests Federal involvement in the automobile insurance business be satisfied not to tap premium taxes and fees now collected by the States?

To establish almost overnight a Federal system of regulation and control which has been developed in each State over many years would not only prove costly—it would undoubtedly lack the understanding of local conditions so vital in an industry such as ours.

And now, Mr. Chairman, I would like to address myself to S. 946, a bill which would permit the marketing of "group" automobile insurance by removing existing State laws, regulations, and other similar restrictions which may prohibit such practices.

I want to say emphatically that the National Association of Mutual Insurance Agents is not opposed to the group marketing of automobile insurance per se. We cannot, and we do not, oppose any marketing system of insurance, so long as it is legal, ethical, and above all, in the best interests of the insurance-buying public.

But, what we do oppose is any so-called group marketing scheme which would mislead the public into believing that such plans would automatically guarantee them automobile coverage at lower costs; and that eventually all employers would offer automobile insurance as a standard fringe benefit of their employment. In our opinion, based on those group automobile insurance plans operating thus far and with which we are familiar, such benefits do not exist.

Mr. Chairman, it is not our intention to be totally negative about the possible adoption of group automobile insurance plans which S. 946 would undoubtedly bring about. Many of the problems that arise can be solved, and indeed some probably already have been. But I do believe that they should be considered seriously by anyone who is advocating, promoting, or considering using group marketing of automobile insurance.

While the problems I have referred to are mainly concerned with the employer-employee relationship, I would point out a general flaw which exists in most, if not all, present group marketing plans. Most programs do not provide for allocation of expenses incurred by the program to the group itself. As a result, these expenses are charged to all of the insuring company's accounts.

Thus, the individual policyholder of that company who does not belong to the group—either because of personal choice or because he does not qualify—actually subsidizes the group policyholders. This practice, in our opinion, is grossly unfair and highly discriminatory.

For example, most group plans now in existence provide stop-loss limits. If a loss exceeds these limits, it is not charged to the group and thus the cost falls on the company's other policyholders who are not eligible for the group.

Prof. Bernard L. Webb, CPCU, who is a strong advocate of mass merchandising, who has written perhaps the most authoritative book on the subject, entitled "Mass Merchandising of Automobile Insurance," and who, I believe, served as a consultant to the Senate Anti-trust Subcommittee in their earlier deliberations on this subject, refers to these stop-loss provisions in the group plans of the Michigan Credit Union League, the Farm Bureau Companies and others. He concludes on page 48 of his book, and I quote, "Group merchandising is not practical unless a substantial portion of premium is paid by the employer."

Professor Webb then goes on to say, on page 59, and again I quote:

"The inequitable allocation of expenses between collective programs and individual policy holders is a distinct possibility. Some insurers may be tempted to use this method of maintaining a low price structure in order to obtain large blocks of premiums. There would be little chance of detection of such improper expense allocation at the present time.

For several years now, the National Association of Mutual Insurance Agents has sponsored and supported legislation at the State level which would in effect permit group marketing of automobile insurance. We have tried to emphasize that stringent safeguards were needed to prevent the insuring public from being duped into accepting a program which would ultimately prove detrimental to their insurance needs. Admittedly, we have enjoyed only a very limited success so far and even have been accused of opposing mass merchandising. But the point is, in those States which have enacted such laws, the insuring public is relatively well-protected because our safeguards were provided for in the proved legislation.

Louisiana, about a year ago, enacted legislation that embodied our suggested safeguards virtually intact; and a similar law was placed on the books a little earlier in New Hampshire. And in New York State, after the legislature had approved the bill—only to have Governor Rockefeller veto it at the last moment, Insurance Superintendent Richard Steward subsequently issued regulations setting forth rather stringent standards for group merchandising of insurance, and they included most of the safeguards we had advocated in the vetoed legislation.

I might add, Mr. Chairman, in Massachusetts the AFL-CIO which a year ago violently opposed our proposed legislation in mass merchandising is in our legislature this year with a bill of their own providing regulation almost word for word, comma for comma to our bill.

Today, in these States, we are confident that group plan participants are relatively well-protected.

Accordingly, Mr. Chairman, we have offered basic guidelines which our association believes must be followed in any group marketing plan for automobile insurance if the insuring public is to be protected adequately.

Mr. Chairman, at this point in the interest of saving your time, I would ask permission to exclude enumerating those guidelines which are incorporated in our original statement.

However, I would be happy to answer any questions you may have on them.

Senator HART. Thank you.

Mr. McGOWAN. It should be pointed out, of course, that several of the principles in our guidelines are in conflict with parts of section 3 of S. 946. We sincerely believe, however, that unless some reasonable and, in our opinion, necessary safeguards are applied to these new marketing plans, the resulting abuses could create even more problems for the insuring public than the concept is intended to eliminate.

Finally, Mr. Chairman, I would like to comment briefly on S. 976, which among other things calls for the design and production of motor vehicles more damage resistant.

Earlier, I referred to specific proposals we have made to promote highway safety, principally aimed at the motor vehicle driver. In our proposed program, we purposely omitted references to the equally important problem of the motor vehicle itself. Our action was predicated on the belief that the Department of Transportation would issue meaningful regulations attacking the serious shortcomings in the automobile which in turn lead to the soaring costs of automobile insurance.

Since then, however, the Department of Transportation has issued bumper safety standards for motor vehicles. While they are a beginning, we are disappointed with the DOT standards because they simply do not go far enough. In our opinion, they will not help us make significant progress toward reducing automobile repair bills and lowering automobile insurance costs.

Accordingly, Mr. Chapman, we support legislation such as this which will in effect provide DOT a mandate to issue stringent standards providing for improved motor vehicle design and production. In addition, of course, it will give the motoring public access to readily available information regarding the comparative safety and susceptibility to damage of the various motor vehicles.

Several insurance companies have already announced significant premium reductions for motor vehicles equipped with bumpers capable of withstanding low-speed crashes. We are confident that all of our companies will ultimately make similar moves if such features become a normal part of all motor vehicles. Then, and only then, Mr. Chairman, can we expect a meaningful reduction in personal injuries and deaths resulting from auto crashes, and a comparable reduction in automobile insurance costs.

I pledge the full support and cooperation of our association toward enactment of such legislation by the Congress. In the meantime, until more meaningful regulations are forthcoming from the Department of Transportation, we will continue to press for stronger motor vehicle design and production standards at the State level.

In conclusion, Mr. Chairman, I repeat that almost everyone agrees that improvement in automobile insurance is needed. Agents, insurance companies, State regulators, State and Federal legislators—none are completely satisfied with automobile insurance as we know it today. But above all, the American motoring public is not completely satisfied. And after all, that is whom automobile insurance is designed to serve.

Until concerted action is taken by all of us, the public will not be

properly served. Now is the time to get off dead center and start moving forward. We respectfully urge you, therefore, to give every possible consideration to the approaches we have proposed to you today.

Thank you, Mr. Chairman, for allowing us to share with you our thoughts and suggestions on the very important legislation now before you.

Senator HART. Mr. McGowan, thank you.

Did Mr. Walton have anything?

Mr. WALTON. I do not have a prepared statement. I am just here to answer any questions that may be directed my way.

Senator HART. Sir, did you care to add anything?

Mr. POTTS. Mr. Chairman, I do not. I am also at your disposal to attempt to answer any questions you may have.

Senator HART. I will open on a happy note first.

Thank you for the support you give to S. 976. With you I think it is long overdue.

Mr. MCGOWAN. We thoroughly agree with your position, Mr. Chairman.

Senator HART. I have raised this with other people. It is this notion that unless you hang on to the tort system you lose this sense of personal responsibility that will deter careless or reckless driving. You refer to that as a reason against going to complete no-fault. While there is no need in engaging in a debate here because in S. 945 we really do not eliminate entirely the tort concept, how do you respond to the Department of Transportation's conclusions that this notion of personal responsibility is not operative under the present system? In that DOT report on page 53 they said:

The claim of a significant deterrent effect for the present automobile liability insurance system has so far proven unsusceptible of substantiation by empirical evidence. . . . most accidents are caused by environmental or personal factors which are external to the individual's conscious control and that punishment or its threat, therefore, is ineffective as a deterrent to deviant driving behavior.

That is a pretty fancy way of trying to say what I have been saying all along. What do you say?

Mr. MCGOWAN. In the first place, don't believe the major reason for holding on to some part of the tort liability concept is that it might add to personal responsibility. I don't quite agree with DOT's position because I think the individual who is held responsible for his liability is held up to public exposure, because in most cases suit is entered against him, in some cases he has to go through the agonies of the civil trial, the expense, the time and the public exposure. So I think there is at least a mild deterrent effect in holding a citizen responsible under civil liability for his actions.

I agree with you, though, that the major responsibility for enforcing personal responsibility or personal attention to driving habits does rest on the law enforcement authorities. Coming from Massachusetts—perhaps you know or maybe you don't—because I read our Governor's statement this morning, and this would lead you in a different direction, but the limited no-fault bill in Massachusetts was a bill which was prepared by independent insurance agents, it was filed in the legislature by independent insurance agents, and it was supported actually by all segments of the insurance industry. It is true that the ultimate bill which the Governor signed was opposed by the industry because

it offered some pie-in-the-sky benefits to policyholders in other areas of insurance other than that covered by the bodily injury section.

But it is not correct to say that the industry opposed it. In fact, as I say, the agents designed the bill and filed it. The reason we opposed complete no-fault, Mr. Chairman, is because we were disturbed about the sharp reduction in benefits to the public. We felt once the public found out what they had, that the image of our industry, which is none too great in the first place, would deteriorate further.

I point out what I think is a flaw in your bill, Mr. Chairman, in that you have a very comprehensive coverage situation, but it seems to me there are some serious holes in it. For example, a college student who might get in an automobile accident and suffer the loss of his right arm below the elbow would not have a 70 percent disability. Yet, all he would be able to recover would be his medical expense and rehabilitation expense. He wouldn't be eligible for any portion of his wages because he never had any. We think there is a serious lack of coverage in benefits to the public in most of the pure no-fault plans.

You see, our plan in Massachusetts, for example, is designed to take care of 95 percent of all the motoring public, because despite the fact we have the highest claim frequency in the United States, our average claim settlement in 1969 for bodily injury was \$780. It might give you some idea why the trial lawyers are so much opposed to our legislation, because this seriously would affect their income.

We read about the \$200,000 verdicts and the \$2 million verdicts, but really, 95 percent of the public is concerned with a verdict under \$2,000.

Senator HART. I doubt it would turn you around in terms of supporting the Hart-Magnuson bill, but I think the college student with the lost arm would not be limited to medical and hospital expense. I think that comes within our catastrophic injury right to tort action section. But in any event, you say in response to my question that the deterrent effect of personal responsibility is not the principal reason for opposing no-fault.

Mr. McGOWAN. That is right.

Senator HART. If we could pin you to the wall and insist on an answer, what would the principal reason for retaining tort be?

Mr. McGOWAN. The principal reason, Mr. Chairman, is I feel in a serious accident, a serious disfigurement or permanent disability that the citizen should have the right to pursue the person who caused his serious problem.

Senator HART. I agree; that is why we think our bill has preserved it.

Mr. McGOWAN. Mr. Chairman, could I ask a question? Perhaps I don't properly understand the bill, but don't you define catastrophic as a disability of more than 70 percent?

Senator HART. I think there would be a lawyer's argument on the definition. Let me ask that there be printed at this point in the record the section of the bill that bears on the question. I think that is the fairest, safest, most responsible way to answer it.

(9) The term "catastrophic harm" means permanent and total disability (including death at any time resulting from injury) or permanent and partial disability of 70 per centum or more. The term "catastrophic harm" includes disfigurement that is permanent, severe, and irreparable.

Senator Cook.

Senator COOK. Thank you, Mr. Chairman. In your statement, Mr. McGowan, you are off to a great start and then all of a sudden we get

down to, "However, the policyholder would have the right to reject the automatic coverages listed above for himself."

This is the same as workmen's compensation, he can take it under the registry or he can take his remedies under straight tort liability. The thing that bothers me is the language in the Volpe report, and I shall read kind of a summary of it; it says—

45 percent of seriously injured victims receive no compensation from automobile liability insurance. Of injured people who do receive liability insurance benefits, those whose losses are less than \$500 collect on an average of four times their losses. On the other hand, people with more than \$25,000 of out of pocket medical expenses, lost wages, average less than 15 percent for coverage. When serious injury occurs, 5 percent of the stricken households have to send other members of the family to work, 3 percent have to move to cheaper housing, 20 percent have to take money from savings or the sale of property, 12 percent miss debt payments.

Now, it seems to me that your one, two, three, and four should constitute conceivably the minimum coverage, and then provide that coverage after that would allow tort recovery, if, in fact, it is the feeling of the injured individual that he should seek that remedy.

Now, it would seem to me that what we are talking about is your own kind of modified Massachusetts plan, is it not?

Mr. McGOWAN. It has some resemblance, Senator, to the Massachusetts plan.

Senator Cook. What was the original proposal that the insurance agents submitted to the legislature in Massachusetts, and where did they vary from the plan that was ultimately passed and signed by the Governor.

Mr. McGOWAN. The original plan, Senator, provided that there would be basic protection limits up to \$2,000, and you would have no right to sue under tort liability for medical expense or loss of wages up to that \$2,000. It took away your right to tort liability. It further provided that you could not sue for pain and suffering unless your medical expenses exceeded \$500, but if they did exceed \$500, then you had the right to pursue under tort liability.

Senator Cook. But you waived your right to the maximum \$2,000?

Mr. McGOWAN. No, you did not. The only difference in the ultimate bill which—of course, the bill that was signed by the Governor extended a 15 percent—see, our bill had statutorily built in a 15-percent reduction in insurance rates for bodily injury coverage. We were facing, as the Governor pointed out this morning, an increase of 20 to 30 percent under the old system, but instead of that we got a 15-percent decrease, and the companies agreed to this, and it was actually incorporated in the statute. But then, in the legislature amendments were offered which first of all forced the companies to take anybody for insurance regardless of their driving record. They could have been convicted of manslaughter, drunken driving, they still had to take them.

No. 2, it extended the 15-percent decrease to property damage and collision coverage for which there were no actuarial bases. There was an actuarial basis for the 15-percent reduction on the bodily injury because a study was made and concluded that if you put in that \$500 limit before you could sue for pain and suffering, that it would produce a savings of between 15 and 20 percent.

The industry did oppose those extensions, and the Governor did sign the bill with those extensions in them. The Supreme Court ultimately declared those parts of the bill unconstitutional.

Senator COOK. As a matter of fact, he said in his statement that there is going to be an increase in those premiums, did he not?

Mr. MCGOWAN. He said there would have been if they didn't have the no-fault.

Senator COOK. I think he also said there probably would be this year.

Mr. MCGOWAN. There was an increase. After the Supreme Court declared the extension unconstitutional, a rate increase was allowed in property damage and collision coverage. But the bill that now is law is essentially the one that we had filed in the first place, Senator. The only difference is in addition to the \$500 for medical expense—and we had also permanent disfigurement and disablement in there—but they added fractures as a right to sue for pain and suffering.

Senator COOK. Obviously, we can get ahold of the Massachusetts Act as it currently is, but I wonder if you would have the opportunity to send to the staff the proposed bill that you submitted to the Massachusetts legislature in its original form so that we might be able to make a comparison of it.

Mr. MCGOWAN. I would be very happy to do so.

(The following information was subsequently received for the record:)

THE COMMONWEALTH OF MASSACHUSETTS—IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY

[S. 1580]

AN ACT Providing for compulsory personal injury protection for all registered motor vehicles, defining such protection, restricting the right to claim damages for pain and suffering in certain actions of tort, regulating further the premium charges for compulsory automobile insurance, and amending certain laws relating thereto

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The first paragraph of section 34A of chapter 90 of the General Laws is hereby amended by striking out, in line 2, as appearing in the Tercentenary Edition, the words "thirty-four J" and inserting in place thereof the following words—thirty-four N.

SEC. 2. Said section 34A of said chapter 90 is further amended by adding the following paragraph—

"Personal injury protection," provisions of a motor vehicle liability policy or motor vehicle liability bond which provide for payment to the named insured in any such motor vehicle liability policy, the obligor of any motor vehicle liability bond, members of the insured's or obligor's household, and authorized operator or passenger of the insured's or obligor's motor vehicle including a guest occupant, and any pedestrian struck by the insured's or obligor's motor vehicle, unless any of the aforesaid is a person entitled to payments or benefits under the provisions of chapter one hundred and fifty-two, of all reasonable expenses incurred within two years from the date of accident for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services, and in the case of persons employed or self-employed at the time of an accident of any amounts actually lost by reason of inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of an injured person's employment, and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household, and in the case of persons not employed or self-employed at the time of an accident of any loss by reason of diminution of earning power and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those

others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household, as a result of bodily injury, sickness or disease, including death at any time resulting therefrom, caused by accident and not suffered intentionally while in or upon, or while entering into or alighting from, or being struck as a pedestrian by, the insured's or obligor's motor vehicle, without regard to negligence or gross negligence or fault of any kind, to the amount or limit of at least two thousand dollars on account of injury to or death of any one person, except that payments for loss of wages or salary or their equivalent or, in the case of persons not employed, loss by reason of diminution of earning power, shall be limited to amounts actually lost by reason of the accident and further limited (1) in the case of persons entitled to wages or salary or their equivalent under any program for continuation of said wages or salary or their equivalent to an amount that, together with any payments due under such a program, will provide seventy-five per cent of any such person's average weekly wage or salary or its equivalent for the year immediately preceding the continuation of said wages or salary or their equivalent to an amount that will provide seventy-five per cent of any such person's average weekly wage or salary or its equivalent for the year immediately preceding the accident. In any case where amounts paid for loss of wage, salary or their equivalent are reduced as a result of any program for continuation of the same and such reduction produces a subsequent loss, as when the limit of any such program for continuation of wage or salary or their equivalent is exhausted with the result that an injured person cannot recover for a later injury or illness as he would have been entitled to but for such a reduction, such subsequent loss to an amount equaling the reduction in personal injury protection made in accordance with this section shall, if incurred within one year after the receipt of the last benefit provided under this section, be treated as a loss of wages, salary or their equivalent incurred as a result of the injury to which personal injury protection applied.

Personal injury protection shall also provide for payment, to the named insured or obligor and members of their households, all amounts defined in this section in any case where such persons incur such expense or loss as a result of such injury while in, upon, entering into or alighting from, or by being struck as a pedestrian by, a motor vehicle not insured by a policy or bond providing personal injury protection unless such person recovers such expenses or loss in an action of tort. Insurers may exclude a person from personal injury protection benefits if such person's conduct contributed to his injury in any of the following ways while operating a motor vehicle in the commonwealth:

- (1) while under the influence of alcohol or a narcotic drug as defined in section one hundred and ninety-seven of chapter ninety-four;
- (2) while committing a felony or seeking to avoid lawful apprehension or arrest by a police officer, or
- (3) with the specific intent of causing injury or damage to himself or others.

Sec. 3. The first sentence of section 34D of said chapter 90, as most recently amended by section 3 of chapter 517 of the acts of 1964, is hereby further amended by adding at the end of the first sentence thereof the following words: and the deposition shall in writing authorize the state treasurer to pay over to the insured assigned a claim under section thirty-four N any and all amounts, including without limitation the reasonable costs of investigating and settling any such claim and such other reasonable expenses expended by it to satisfy a claim for personal injury protection made against it by any person, other than the depositor or members of his household, who is entitled to such payments as a result of the unavailability of personal injury protection benefits on said depositor's motor vehicle.

Sec. 4. Said chapter ninety is hereby further amended by inserting after section 34K the following two sections:

*Section 34M.* Every motor vehicle liability policy and every motor vehicle liability bond, as defined in section thirty-four A, issued or executed in this commonwealth shall provide personal injury protection benefits as defined therein except to the extent such defined benefits to an insured or obligor or members of an insured's or obligor's household may be modified, reduced or eliminated by the purchase of the deductible authorized in this section. The benefits due and payable under any motor vehicle liability policy or bond as a result of the provisions therein providing personal injury protection benefits, and any benefits due any person entitled to make claim under the assigned claims plan established in accordance with section thirty-four N, are granted in lieu of damages otherwise

recoverable by the injured person or persons in tort as a result of an accident occurring within this commonwealth.

Every owner, registrant, operator or occupant of a motor vehicle to which personal injury protection benefits apply who would otherwise be liable in tort, and any person or organization legally responsible for his acts or omissions, is hereby made exempt from tort liability for damages because of bodily injury, sickness, disease or death arising out of the ownership, operation, maintenance or use of such motor vehicle to the extent that the insured party is, or would be had he or someone for him not purchased a deductible authorized by this section, entitled to recover under those provisions of a motor vehicle liability policy or bond that provide personal injury protection benefits or from the insurer assigned. No such exemption from tort liability shall apply in the case of an accident occurring outside the commonwealth. However, if any person claiming or entitled to benefits under the personal injury protection provisions of a policy or bond insuring a vehicle registered in this commonwealth brings amounts otherwise due such a person under the provisions of section thirty-four A shall not become due and payable until a settlement is reached or a final judgment is rendered in such a case and the amounts then due shall be reduced to that extent that damages for expenses and loss otherwise recoverable as a personal injury protection benefit are included in any such settlement or judgment.

Claim for benefits due under the provisions of personal injury protection or from the insurer assigned shall be presented to the company providing such benefits as soon as practicable after the accident occurs from which such claim arises, and in every case, within at least two years from the date of accident, and shall include a written description of the nature and extent of injuries sustained, treatment received and contemplated and such other information as may assist in determining the amount due and payable. If benefits for loss of wage or salary, or in the case of the self-employed their equivalent, are claimed the party presenting such a claim shall authorize the insurer to obtain details of all wage or salary payments, or their equivalent, paid to him by any employer in the year immediately preceding the date of accident, or earned by him, and authorize the insurer to make any reasonable necessary investigation as to whether or not such loss may be reduced in whole or in part as a result of any program calling for the continuance of such wage, salary or earnings during absence from work. The injured person shall submit to physical examination by physicians selected by the insurer as often as may be reasonably required and shall do all things necessary to enable the insurer to obtain medical reports and other needed information to assist in determining the amounts due. Noncooperation of an injured party shall be a defense to the insurer in any suit for benefits authorized by this section and failure of an insurer to pay benefits in the event of such noncooperation shall not in any way affect the exemption from tort liability granted herein.

Personal injury protection benefits and benefits due from an insurer assigned shall be due and payable as loss accrues, upon receipt of reasonable proof of the fact and amount of expenses and loss incurred, but an insurer may agree to a lump sum discharging all future liability for such benefits on its own behalf and on behalf of the insured. In any case where benefits due and payable remain unpaid for more than thirty days, and unpaid party shall be deemed a party to a contract with the insurer responsible for payment and shall therefore have a right to commence an action in contract for payment of amounts therein determined to be due in accordance with the provisions of this chapter.

Any insurer paying benefits in accordance with the provisions of this section shall be subrogated to that exact extent to the rights of any party it pays and may bring an action in tort against any person liable for such damages in tort who is not exempt from said liability as a result of the provisions of this section. Said insurer is also hereby given the right to make claim for all expenses it incurs on account of such payments, including the net amount of benefits paid, costs of processing claims for any such benefits, and the expenses of enforcing this right, against any other insurer providing a motor vehicle liability policy or bond on a motor vehicle registered in this commonwealth, whose owner or operator would, except for the exemption from tort liability provided in this section, be liable for such damages in tort. Determination as to whether any insurer is legally entitled to recover any such expense from another insurer shall be made by agreement between the

involved insurer, or, if they fail to agree, by arbitration in accordance with the provisions of the General Laws.

Each insurer providing personal injury protection shall issue to any person purchasing a motor vehicle liability policy or bond, at his option, a policy endorsement, approved as to content by the commissioner of insurance and subject to such other regulations regarding said endorsement as the commissioner may from time to time make after appropriate hearing, which shall provide that there shall be deducted from amounts that would otherwise be or become due to the policyholder alone or to the policyholder and members of his household, as the policyholder elects, an amount of either two hundred and fifty dollars, five hundred dollars, one thousand dollars or two thousand dollars, again as the policyholder elects, said amount to be deducted from the amounts otherwise due each person subject to the deduction. Any person electing such an endorsement or subject to such an endorsement as a result of the policyholder's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator or occupant of a motor vehicle or any person or organization legally responsible for any such owner's, registrant's, operator's or occupant's acts or omissions who is made exempt from tort liability by this section.

Amounts deducted from payment in accordance with the provisions of the preceding paragraph shall not have any effect upon the determination of whether or not the reasonable and necessary expenses incurred as a result of any injury exceed or do not exceed five hundred dollars, which determination may affect an injured person's rights unsection section six D of chapter two hundred and thirty-one.

thirty-one.

*Section 34N.* Insurers authorized to provide personal injury protection in this commonwealth are hereby directed to organize and maintain an assigned claims plan to provide that any person resident in the commonwealth, other than the owner or registrant of a motor vehicle not insured by a policy or bond providing personal injury protection or a member of such owner or registrant's household, who suffers loss or expense as a result of an injury arising out of the ownership, operation, maintenance or use of a motor vehicle while the motor vehicle is upon the ways of the commonwealth or in any place therein to which the public has a right of access, may obtain personal injury protection benefits through said plan in any case where no personal injury protection benefits are otherwise available to such a person provided that the following shall not be entitled to such benefits:

(1) a person entitled to payments or benefits under the provisions of chapter one hundred and fifty-two, or

(2) a person who is subject to exclusion from personal injury protection benefits by insurers under section thirty-four A of this chapter.

Said plan shall contain such rules and regulations for operation and for the assessment of costs as shall be approved by the commissioner of insurance. Any claim brought through said plan shall be assigned to an insurer in accordance with the approved regulations of operation and that insurer, after such assignment, shall have the same rights and obligations it would have if prior to such assignment it had issued a policy providing personal injury protection applicable to the loss or expenses incurred. Any party accepting such benefits hereunder shall have such rights and obligations as he would have were a policy providing personal injury protection benefits issued to him.

Sec. 5. Chapter 231 of the General Laws is hereby amended by inserting after section 6C the following section:-

*Section 6D.* In any action of tort brought as a result of bodily injury, sickness or disease, arising out of the ownership, operation, maintenance or use of a motor vehicle within this commonwealth by the defendant, a plaintiff may recover damages for pain and suffering, including mental suffering associated with such injury, sickness or disease, only if the reasonable and necessary expenses incurred in treating such injury, sickness or disease for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral expenses are determined to be in excess of five hundred dollars unless such injury, sickness or disease (1) causes death, or (2) consists in whole or or in part of loss of a body member, or (3) consists in whole or in part of permanent and serious disfigurement, or (4) results in such loss of sight or hearing as is described

in paragraphs (a), (b), (c), (d), (e), (f) and (g) of section thirty-six of chapter one hundred and fifty-two or (5) consists of a fracture.

Sec. 6. Notwithstanding any provisions of section one hundred and thirteen B of chapter one hundred and seventy-five of the General Laws to the contrary, for the purposes of putting into effect the provisions of the General Laws providing for personal injury protection, the commissioner of insurance shall, on or before September the fifteenth in the current year, fix and establish the same classifications of risks and premium charges at least fifteen per cent lower for each classification of risk within each territory from the following rates:

	Class 10	Class 12	Class 20	Class 22	Class 24	Class 26	Class 30	Class 40	Class 42	Class 50
<b>Territories:</b>										
1.....	\$117.00	\$140.50	\$351.00	\$374.50	\$193.00	\$164.00	\$169.50	\$222.50	\$304.00	\$234.00
2.....	108.00	129.50	324.00	345.50	178.00	151.00	156.50	205.00	281.00	216.00
3.....	100.50	120.50	301.50	321.50	166.00	140.50	145.50	191.00	261.50	201.00
4.....	96.50	116.00	289.50	309.00	159.00	135.00	140.00	183.50	251.00	193.00
5.....	88.00	105.50	264.00	281.50	145.00	123.00	127.50	167.00	229.00	176.00
6.....	79.00	95.00	237.00	253.00	130.50	110.50	114.50	150.00	205.50	158.00
7.....	68.00	81.50	204.00	217.50	112.00	95.00	98.50	129.00	177.00	136.00
8.....	63.50	76.00	190.50	203.00	105.00	89.00	92.00	120.50	165.00	127.00
9.....	59.00	71.00	177.00	189.00	97.50	82.50	85.50	112.00	153.50	118.00
10.....	54.50	65.50	163.50	174.50	90.00	76.50	79.00	103.50	141.50	109.00
11.....	49.00	59.00	147.00	157.00	81.00	68.50	71.00	93.00	127.50	98.00
12.....	43.50	52.00	130.50	139.00	72.00	61.00	63.00	82.50	113.00	87.00
13.....	37.00	44.50	111.00	118.50	61.00	52.00	53.50	70.50	96.00	74.00
14.....	30.50	36.50	91.50	97.50	50.50	42.50	44.00	58.00	79.50	61.00
15.....	24.00	29.00	72.00	77.00	39.50	33.50	35.00	45.50	62.50	48.00

Said premium charges shall be the maximum charges to be used and charged by companies in connection with the issue or execution of motor vehicle liability policies or bonds, both as defined in section thirty-four A of chapter ninety of the General Laws for the ensuing calendar year or any part thereof but any company may make written application to the commissioner of insurance for permission to use, in place of the premium charges fixed and established by him as aforesaid, such lesser charges as are now permitted by the provisions of section one hundred and thirteen B of chapter one hundred and seventy-five.

The rate of all other motor vehicle insurance coverages including those motor vehicle insurance rates filed according to the provisions of chapter one hundred and seventy-five A of the General Laws and established under the provisions of section one hundred and thirteen C of chapter one hundred and seventy-five of the General Laws shall be at least fifteen per cent lower than all rates for such coverages now in effect for the year nineteen hundred and seventy.

All the reduced rates in this section shall be deemed and accepted as adequate, just, reasonable and nondiscriminatory rates for the calendar year nineteen hundred and seventy-one, based on the current relevant costs: Any future increases in these rates shall be allowed only in relation to increases in such relevant costs; and any reduction in such relevant costs shall result in corresponding reductions of the insurance rates.

Sec. 7. Section 113B of chapter 175 of the General Laws, as most recently amended, is hereby further amended by inserting after the first paragraph the following paragraph:

In fixing and establishing classifications for premium charges to be used in connection with motor vehicle liability policies or bonds for the calendar year nineteen hundred and seventy-two and each calendar year thereafter, the commissioner shall establish reasonable surcharges, above the premium charges otherwise due, for each conviction for a moving violation committed, within the period herein specified, by the policyholder of such a policy, or the obligor of such a bond, or any other driver who resides in the same household as the policyholder or obligor and is included among those authorized to drive any vehicle covered by such policy or bond. The commissioner shall also establish reasonable discounts to be applied when neither the policyholder nor obligor, nor any other driver who resides in his household and is authorized to drive any vehicle covered by such policy or bond, has been the driver of a vehicle involved, within the period herein specified, in an accident required to be reported under the provisions of section twenty-six of chapter ninety. The period to be considered in fixing the surcharges and discounts for a calendar year shall be the

period closing on August the thirty-first next preceding the calendar year to which such surcharges and discounts apply; it shall be a period commencing no sooner than September the first, nineteen hundred and seventy and in no event exceeding five years in length; and, with respect to calculating a discount, it shall be the period commencing on September the first next after the last reportable accident involvement. In the absence of a finding otherwise by the commissioner, based on data accumulated under this merit system and such other evidence as the commissioner considers relevant and material, reasonable surcharges and discounts shall be presumed to be the following: for each conviction of driving under the influence of intoxicating liquor or narcotic or hallucinogenic drugs, a surcharge of one hundred per cent; for each conviction of speeding, a surcharge of twenty per cent; for each conviction of any other moving violation, a surcharge of ten per cent; for each full year of reportable accident involvement, a discount of two per cent.

Sec. 8. Said chapter 175 is hereby amended by inserting after section 220 the following section:

*Section 22E.* No company shall issue any policy of insurance which provides coverage against loss or damage to or loss of use of, motor vehicle resulting from collision, fire, lightning, and larceny, pilferage, theft, malicious mischief, vandalism or any other perils usually against, or which insures any person against, legal liability for loss or damage on account of the bodily injury or death of any other person or on account of any damages to property of another, arising out of the ownership, maintenance, control or use of motor vehicles, including motor vehicle liability policies as defined in section thirty-four A of chapter ninety, unless said policy contains a provision that it shall be automatically renewed by the company except for fraud, conviction for use of unlawful drugs or driving under the influence of liquor, or nonpayment of premiums. Further, no insurance company, and no officer or agent thereof on its behalf, shall refuse to issue or execute as surety a motor vehicle liability policy or bond or any other insurance based on the ownership or operation of a motor vehicle because of place or garaging of the vehicle.

Sec. 9. Section 113C of said chapter 175 is hereby amended by striking out the second paragraph, added by section 3 of chapter 643 of the acts of 1968, and inserting in place thereof the following paragraph:

No company shall be authorized to issue such motor vehicle liability policies or to act as surety upon such motor vehicle liability bonds unless it makes a mandatory offer to issue to any person purchasing such policy or bond at his option, additional coverage, beyond that required by section thirty-four A of chapter ninety, of at least fifteen thousand dollars on account of injury to or death of one person and at least forty thousand dollars on account of any one accident resulting in injury to or death of more than one person, and of the combination of bodily injury liability off the ways of the commonwealth and liability for guest occupants on and off the ways of the commonwealth, of medical coverage, so-called, and of property damage, so-called, to a limit of at least five thousand dollars, of fire and theft coverage, compressive coverage and collision coverage, so-called. The rates for other than fire, theft, comprehensive and collision insurance shall be subject to the approval of the commissioner, under the provisions of section one hundred and thirteen B.

Sec. 10. Section six of this act shall take effect upon passage; all other sections of this act shall take effect on January the first, nineteen hundred and seventy-one and for the purpose of the issuance of motor vehicle liability policies or bonds for the calendar year nineteen hundred and seventy-one all things necessary to be done prior to said effective date may be done.

Sec. 11. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not impair any of the remaining provisions.

House of Representatives, August 10, 1970. Passed to be enacted.

DAVID M. BENTLEY,  
*Speaker.*

In Senate, August 11, 1970. Passed to be enacted.

MAURICE A. DUNAHAN,  
*President.*

August 13, 1970.

Approved, at 8 o'clock and 10 minutes, P.M.

FRANK CASPER,  
*Acting Governor.*

Senator COOK. Thank you, Mr. Chairman.

Senator HART. Let me ask Mr. Sutcliffe to address some questions to the witness.

Mr. SUTCLIFFE. Mr. McGowan, let me refer you to page 116 of the Department of Transportation's study where they present an analysis of the improved reparations system shown. The Department of Transportation lists as "Advantages of the 'improve the present reparations system' option"—“(a) it would bring reparations to some victims not now compensated, for example, those barred by contributory negligence or immunity doctrines,” and your statement mentions this advantage; “(b) compulsory, universal insurance would prevent uninsured motorists from being able to benefit from the system while not contributing to it.” In other areas of the report, the Department of Transportation study indicates between 15 and 20 percent of drivers in this country may be driving without liability insurance coverages. “(c) Delay occasioned by court congestion shown would be mitigated.”

The disadvantages of the system are listed as these :

- (a) It retains most of the costs inherent in any adversary system ;
- (b) It does not come to grips with the needs of the “guilty” victim and his dependents or survivors.
- (c) It is more likely to increase costs than decrease them.
- (d) A more efficient judicial administration may increase the litigation burden rather than decrease it since more cases can be litigated, albeit faster.

I would like to address a question to part (c) of the disadvantages. “It is more likely to increase costs than decrease them.”

According to the Department of Transportation's study, the insurance industry presently collects approximately \$14 billion in premiums and pays in benefits to policyholders about \$7 billion. The DOT report also says that there are about \$11 billion in compensable economic loss occurring each year as a result of automobile accidents.

Under the system that you advocate, would the \$7 billion of benefits increase under your particular proposal?

Mr. MCGOWAN. I think there would be a double effect, Mr. Sutcliffe. I think that the benefits would logically increase and I think the premium would possibly go down. The only trouble is that we don't have, any of us, any actuarial experience to go on regarding the no-fault system. Many claim, some of them rather sensationally, cost savings. I suggest to you, Mr. Sutcliffe, the only possible chance of reducing costs on automobile insurance is to either reduce the benefits or to reduce the expense. We maintain that our limited—

Mr. SUTCLIFFE. Is there a third alternative, reduction of the losses that are incurred?

Mr. MCGOWAN. That would be up to the enforcement authorities primarily. But within the purview of the insurance agent—we don't have any control over the enforcement, we don't have control over the manufacture of automobiles.

Mr. SUTCLIFFE. You do have control over the rating of vehicles and the charging of premiums for collision and property damage coverage?

Mr. MCGOWAN. I would suggest, Mr. Sutcliffe, that experience indicates that we have very little control over that. I am sure you have heard the companies countrywide, at least the assertion, in some cases justified, by insurance companies that they are not able to get adequate rates from State regulatory authorities.

Let me submit to you that many times I have been very critical of the companies also for some of their practices. So I am not here as an advocate of the companies, but I am certainly willing to recognize the honest problems that they have. So I don't think they really have an awful lot of control. I think the social and political pressures which we all have to deal with have a great deal more control over the rates than the companies do. But insofar as damagability and enforcement, we just don't have any control at all. But in the area of reducing expense, our plan does do that, because it eliminates a great deal of claim adjustment expenses, and it does eliminate litigation.

Again I point out that 95 percent of the cases would be handled by our particular approach. In Massachusetts, as I mentioned earlier—I don't want to take your time repeating—but one of our companies in Massachusetts did a thorough actuarial study over a 5-year basis of the application of that \$500 limit on pain and suffering, with certain other safeguards such as permanent disfigurement, and they found an actuarial savings here of between 15 and 20 percent. That is why 15 percent was built into the law, and from experience, which is only 3 months old, it probably isn't too credible, but it certainly indicates that if it continues there will be a further substantial reduction in automobile insurance premiums in 1972.

I take no position that that experience will continue, but if it does, I make the assertion that there will be a further reduction in cost.

But, Mr. Sutcliffe, let's face it. We have reduced benefits to the public, you see. We say to the public now that unless you have \$500 of medical expense or permanent disfigurement or death or a fracture, then you cannot sue for pain and suffering which you could have done before. So we have reduced benefits.

MR. SUTCLIFFE. Let me stop you right there, because I think the concept of reducing benefits, in one sense you are taking money away from people as Senator Cook has suggested, who are being compensated for much more than their economic loss; you may be redistributing those funds to people who are only recovering in higher areas of loss as little as one-third of their total economic loss. To say that we are reducing benefits may be inaccurate. We may be redistributing the benefits and making them more equitable in terms of providing benefits in relation to the loss.

MR. MCGOWAN. I agree, Mr. Sutcliffe, that we probably would redistribute the benefits, but it seems to me that unless you do retain some kind of an opportunity to go into tort liability, you are redistributing more of the benefits to the lower amounts of loss, which is really what we are frankly trying to do in Massachusetts. We are trying to make it easy for the average citizen to collect his economic loss without going to any legal expense or loss of time or waiting for the money. So we feel that with a \$2,000 no-fault provision, for example, that it is the small case that is going to be taken care of even more completely than before, rather than the larger case.

MR. SUTCLIFFE. But it is going to be taken care of at a level commensurate with the loss and not exceeding the actual economic loss.

MR. MCGOWAN. Correct.

MR. SUTCLIFFE. So that perhaps would allow for other funds—you see we have a \$12 billion loss and we have \$7 billion now finding its way into the pockets of people, not on an equitable basis. As Senator Magnuson said in his opening statement, our desire is to find an insurance

system that covers totally the amount of loss and covers it on the basis related to the individual's own particular loss. What I am trying to ask you is how are you going to bring that \$7 billion up to cover the \$12 billion loss under your plan, point 1; and, point 2, if you are able to cover through your insurance mechanism the \$12 billion loss, are you going to have to do it by raising the \$14 billion premium figure to a figure much higher?

Mr. McGOWAN. Well, in answer to the first part of your question we are going to get obviously more of the premium dollar into the hands of 95 percent of the accident victims because they are not going to have any argument about contributory negligence and are not going to be in a position where they can't afford a lawyer or can't both pursue the case through the courts. So we are going to get a greater part of the premium dollar to them.

We are going to reduce the expense factor because of the saving in litigation costs and adjustment costs. As far as the second part of your question is concerned—

Mr. SUTCLIFFE. You mentioned savings in operations cost. Under the Massachusetts proposal and your own proposal, you provide for subrogation of the insurance carriers to those no-fault claimants. This suggests to me that the companies are going to have to litigate between one another, either in a court of law or through arbitration to decide who is at fault in the accident. This seems to be a burden upon the insurance system and an added cost that you could eliminate. And, too, it seems it might inconvenience consumers who might have to participate in these proceedings before an arbitrator or in a court of law.

Could you comment on why that subrogation provision is maintained under the no-fault concept if your desire is to reduce operating costs?

Mr. McGOWAN. Mr. Sutcliffe, I respectfully suggest there is no subrogation provision in the Massachusetts law. The right of a company to pursue another company if it feels that the insured of that company was at fault is retained not through subrogation but through arbitration, and the participation of the accident victim is not required.

Mr. SUTCLIFFE. Perhaps for the record, then I could submit a special report on Massachusetts insurance law published by the Massachusetts Association of Independent Insurance Agents and Brokers which on page 13 says:

Inter-company insurer subrogation: We have already seen that a compensating first-party personal injury protection benefits to any party making a tort claim against another who is not exempt from tort liability is subrogated to the injured party's claims. Far more important, however, is the rather unique subrogation-like right between insurers set up in the new law. It is a central reason that the plan will not have adverse effects on underwriting as it has been practiced. It can, as a result, be very important to producers operating on profit or contingent arrangements.

Mr. McGOWAN. I don't have a copy of the statute with me, but I will get it for you, and the statute does go to some effort to distinguish between subrogation, as we understand it under the old law and what you refer to as intercompany subrogation. It is provided that it is handled by arbitration between the companies and not through the courts.

Mr. SUTCLIFFE. That is correct, but is that a cost necessary to the system? We are trying to save consumers' money, and I am just trying to find out about why the decision was made to preserve that operating cost?

Mr. MCGOWAN. Well, I suppose the answer that is given in the booklet—we are trying, of course, primarily to keep open markets so that we can get automobile insurance for our customers which had been rather difficult in Massachusetts prior to January 1, 1971, and I suppose the reason for it was that a company would have a better underwriting attitude if it knew that its insured, who was wrongfully and negligently injured, could possibly recover the cost of paying his claim from the other insurance company.

They have no right of subrogation against the person who caused the accident, though.

Mr. SUTCLIFFE. Doesn't this preserve the very concept in the market place right now which Mr. Klein from Consumers Union referred to yesterday as "skimming?" In other words, as you in the concluding paragraph on interinsured subrogation say, "In practical effect, this means the liability exposure of companies remains essentially as good or as bad as it was before."

Mr. MCGOWAN. Mr. Sutcliffe, let me say for the record that both our association and I personally are unalterably opposed to any cream-skimming device. We have been opposed to this in the past and we continue to be opposed to it. And that is why in our guidelines, if you note, we support Senator Hart's position on group merchandising, that if a company enters into a group that it must be required to offer insurance to all members of the group rather than further add to the residual market, which is happening in group merchandising plans at the present time. So we are opposed to that.

I do not agree that this practice of allowing a company to pursue another company to recover its loss adds to cream skimming. I think it decreases it. I think a company is more comfortable paying losses if it knows it can pursue the company which insures the party that caused the loss. This would not require in my opinion any great amount of expense, because it would not be getting into expensive legal fees, and the whole matter would be handled by paid employees of the insurance company itself.

Mr. SUTCLIFFE. How would an insurance company determine the fault of a driver who had been paid no-fault benefits? Would he have to call them in before the arbiter? How is this occurring in Massachusetts? In other words, you have two people whose losses are in the no-fault area; they are paid, and their insurers go through this subrogationlike arrangement. What is the impact upon the consumer, the policyholder?

Mr. MCGOWAN. The impact on the consumer is nil, Mr. Sutcliffe. The company has no authority to call them in. That is specifically not provided for in the statute. In other words, if it is a very complicated case I am sure they are just not going to pursue it; if it is an open-and-shut case—I am stopped at a red light and I am rear ended by Mr. Potts—I am sure they will pursue Mr. Potts' company to try to collect the money, and I believe they will collect without difficulty.

I do not believe the companies are going to get into any complicated cases because they have to go to law firms. But they do not have the right to call the consumer in.

Senator Cook. We are also saying that regardless of what kind of program one advocates, it is not a matter of somebody picking up the phone saying I have had an automobile accident; here is the extent of the damage I have suffered. After all, you are going to continue to make examinations of these things and make files of these things. To say that a determination of fault in most instances cannot be made from the record, if at least in Massachusetts 95 percent of the cases have been settled for less than \$600, is a determination that has been based on the record, and it has been based on the record that has been compiled by claims adjusters, and will continue to be done so; is that not true?

Mr. McGOWAN. This is true, Senator.

Senator Cook. This is the basis on which intercompany settlements would be presently made under an agreement I would assume, that insurance companies will make with each other to go into a State to do business?

Mr. McGOWAN. There is a distinction, Senator, between what has been happening and what is happening now. As a matter of fact, as agents at the point of sale have noticed that claims settlements are coming through almost immediately. In other words, as soon as medical bills are filed, we sometimes have a check 2 or 3 days afterward; in fact, most of the time within a week, which is certainly a remarkable phenomenon for us and which is certainly favorably impressing the public in our State so far.

But here are the differences: Under the old system the company would assign the claim to an adjuster, he would have gone out and interviewed the other party, gone to the police station, gotten the police report, gotten witnesses, and so forth. This is expensive. Under the new system all this is eliminated. All the company needs to know now really is what damage and how much the particular insured suffered as far as medical expense and loss of wages. He can inquire from the employer what the wage level was, but he would have done that under the old system also.

Senator Cook. This concept is almost on the same basis as under the workmen's compensation law. I'm interested in getting figures into the record, if we could, that show in workmen's compensation cases how many elections are made to pursue tort liability rather than settle under the present regulations and under the present figures established by the respective legislatures. Could we get that from the industry?

Mr. McGOWAN. I do not know, Senator, if those statistics would be available. I can say after 17 years in this business I have never seen one election or heard of one being made. That does not mean there have not been any. But we will certainly try to get the figures for you.

Senator Cook. I know of several that have been made.

Mr. McGOWAN. You do?

Senator Cook. Obviously because of the extent of the injury that occurred and to the extent that death occurred under the circumstances. I think it would be interesting to determine how many

elections are made under the present system and how many elect to deny the registry and pursue under tort liability. I think these figures would be interesting.

Mr. McGOWAN. Senator, we will make every effort to see if they are available.

(The following information was subsequently received for the record:)

Our investigation reveals that although there are occasional cases where the employee sues for recovery under tort liability, the great majority do not because most States do not give the employee such an option; and, in those States that do, few actually elect to sue. Unfortunately, we have been unable so far to secure any meaningful statistics on this particular subject. Perhaps an inquiry by your Committee to the American Mutual Insurance Alliance or the American Insurance Association would prove helpful.

Senator Cook. Particularly because you are offering it on the alternative.

Mr. McGOWAN. We have a little different reason. We are trying to look after the citizen who has very adequate insurance of his own. For example, in my own case I have very substantial major medical insurance and I have very substantial disability income insurance; and there are many other people who are equally well covered. We just thought that it was unfair to force such a person to buy these automatic basic coverages when he is protected already and he is paying for it.

Senator Cook. What you are saying then is this still does not eliminate an election to pursue under no fault. For instance, if you hit a Phil Hart, who is the senior Senator from Michigan, and you feel you might get a bigger recovery if you took that than you would under a no fault, that would mean, for instance, that he or I would still have to carry the maximum coverage. I have so much I do not know what to do with it, but that is because I have so many drivers in the family.

Mr. McGOWAN. That is correct, Senator.

Mr. SUTCLIFFE. To understand better your proposal on the election point, would the individual himself be able to determine whether he was going to be susceptible to tort liability? In other words, if he purchases a policy and elects to go under first-party coverage, he has insulated himself up to a \$2,000 medical and rehabilitation cost level and \$6,000 wage replacement level against tort liability; is that correct?

Mr. McGOWAN. That is correct, Mr. Sutcliffe.

Mr. SUTCLIFFE. If he has not elected that particular kind of coverage but chooses instead to stay within the present system, then he has chosen to retain the present tort liability, he has from zero to whatever the damages are?

Mr. McGOWAN. That is correct, Mr. Sutcliffe.

Mr. SUTCLIFFE. What if a person who has chosen the first-party coverages is hit by a driver without first-party coverages and the person without first-party coverages is at fault, can the person with first-party coverages sue the negligent party with third-party liability coverages only?

Mr. McGOWAN. Not if he collects his first-party coverages. In other words, if he picks up \$2,000 from his company he is prevented from pursuing up to that limit.

U.C. BERKELEY LIBRARY

Mr. SUTCLIFFE. But he does not have to prove any limits as such if he decides to go into court? You provide for court access of the people who have elected and those who have not elected, don't you?

Mr. MCGOWAN. What I am trying to say is if he has first-party coverage and takes those benefits, then he cannot pursue the other party up to those limits.

Mr. SUTCLIFFE. In your prepared statement you assert that arbitration has "proved to be a less expensive procedure to the litigants." I wonder if you could provide the committee with details of the Philadelphia plan and document that particular statement.

Mr. MCGOWAN. Yes, we can, Mr. Sutcliffe, and we will do that.

(The following information was subsequently received for the record:)

Enclosed is a report of the Arbitration Commission<sup>1</sup> covering the first ten years of that city's compulsory arbitration program, which began on February 17, 1958. This report unquestionably proves the merit of the system. On page 232, for example, the average cost per case is set at \$62.00 and the statistical tables attached to the report attest to the success of the program (since this report was prepared, the disposition of cases has improved and the amount in controversy increased to \$3,000). More recently, a *voluntary* arbitration system covering all cases involving claims between \$3,000 and \$10,000 has been added in Philadelphia. Cases above \$10,000 have been identified as "major cases" and assigned for trial jury to certain well-qualified judges on an individual calendar basis. This lifts the serious case out of the morass of smaller cases and enables it to reach trial at an earlier date. Meanwhile, in the cases which are not identified as major cases, the parties have been invited to sign stipulations agreeing to arbitrate under the same rules as the compulsory arbitration system. Enclosed is a brief summary of the \$10,000 arbitration program prepared by the administrative judge.<sup>2</sup> Figures from this report show early signs of success and every expectation is that the backlog will no longer exist in Philadelphia within a year. Also enclosed for your information, is a set of statistics on the compulsory arbitration program and an article, "Arbitration: The Philadelphia Story," reprinted from the *Journal of American Insurance*.<sup>3</sup> Finally, if the Commerce Committee is interested in having this unique system more fully explained, we have been informed that knowledgeable attorneys and officials of the Philadelphia Common Pleas Court would be happy to appear before the Committee.

Mr. SUTCLIFFE. If you could also include a comparison of the premium levels in Philadelphia and the court congestion in Philadelphia in comparison with other similar metropolitan areas we would certainly appreciate that.

Mr. MCGOWAN. Yes, we will do that, Mr. Sutcliffe.<sup>3</sup>

Senator HART. In your statement you say:

Insurance companies must be allowed a certain amount of freedom in the marketplace if the entire problem of automobile insurance cost and availability is to be solved.

A couple of years ago New York adopted the open competition rating system. The assigned risk plan of New York as sent to the committee's staff showed that for the first 3 months of last year there were about 115,000 private passenger cars in that plan. For the first 3 months of this year that figure has gone up to roughly 214,000. Sixty percent of these cars are clean risks, no traffic accident history at all. Wouldn't that data suggest that given the freedom-in-the-marketplace concept the insurance agent certainly has not solved the availability problem? Do you have any reaction to my reaction of those figures?

<sup>1</sup> See p. 504.

<sup>2</sup> See p. 536.

<sup>3</sup> The information was not available.

Mr. McGOWAN. I would certainly agree in New York they have not solved the voluntary market problem, Mr. Chairman. One of the problems with open competition is if the rate adequacy situation in a particular State is very bad, in other words, if there have been no rate increases allowed over a period of 4 or 5 years, or 3 or 4 years, as, for example, Massachusetts and to some degree New York, you build up a situation where when you throw it into open competition the companies have to come up or will come up almost immediately with rate increases which are politically and socially unacceptable.

In California open competition has worked beautifully. Everybody seems to be very happy with it, including the consumer, but the California plan began at a time when the rates in California were already adequate. The result is you have quite a variation of competitive rates in the State of California, differences ranging up to 20 percent. So you really have a good competition situation. But in Florida and New York where there have been inadequate rates for a number of years, the companies, of course, in both cases started to recover their position somewhat and got into a real difficult situation politically.

All of us are quite upset about the assigned risk situation, particularly in New York, the number of people that are in it, as you say, that are accident free. I suspect at some point in time, Mr. Chairman, that your committee will well be considering what solution we are going to have for the industry. Usually we wait for these problems to become too severe to solve. What bothers me more and more is legislation being enacted which requires a company to take insurance, prohibits them from nonrenewing insurance or from canceling insurance regardless of loss experience, which I will also agree is going to continue to be a matter of legislative action because the public must, I believe, have access to insurance regardless.

Therefore, the companies are going to lose their right of selection, and I am willing to accept that, but since they are, I submit that there is either going to have to be some kind of subsidy to take care of the social and political needs which they are going to satisfy, because I do not think they are going to be able to get adequate rates in the States which will compensate for the fact that they no longer will have the right of selection.

So this is part of the problem in New York. The companies are taking a defensive position, which I suspect will be self-destructive, of putting an awful lot of business in the assigned risk pool that probably should not be there.

Mr. WALTON. If you could move those 60 percent to Michigan, we could take care of them all right there without the assigned risk plan, although the number of participants in an assigned risk plan increasing, I am sure, but I do not think you will find anything like 60 percent of them with an accident-free record. They are in the plan because of the records they do have, and part of our suggestion has something to do with the people that are driving. This is something we feel real strongly about. We feel a lot of our problems would be solved if we had more stringent licensing and who is given the privilege of driving.

But move them to Michigan, we can take care of that 60 percent.

Mr. SUTCLIFFE. One more question for the record. In your statement you mention the fact that extraterritorial coverage is now a normal part of most insurance policies and that this should present no problem in

a reform situation. Suppose that a State-by-State approach to insurance reform is taken so that the general uniformity of the tort law, albeit there are differences now that exist, but the general uniformity of the tort law is modified in a number of jurisdictions, what practical problems from the standpoint of an agent and an insurance company and a policyholder are there for writing extraterritorial coverages that would protect the policy holder when he is outside his own State and he is involved in an automobile accident, and what problems would there be in the conflicts of laws situations where you are trying to determine the laws of which jurisdiction apply to a particular accident?

Having formulated that question in rather general terms, let me see if I can bring it down to a specific example. Suppose the NAMIA plan is adopted in New Hampshire and a New Hampshire driver has an accident in New York. Under the NAMIA plan would he be liable to damages to the other driver if he were found at fault?

Mr. McGOWAN. Yes, he certainly would. I do not see where there is any great problem on a State-by-State solution, and I think it has some advantages in experimentation. As a practical matter, under the Massachusetts plan no matter where I drive in the other States or Canada; I am covered under my basic protection plan. So I would be covered under the so-called no-fault section to the limits of the policy, but I am also covered for tort liability for whatever liabilities I choose to carry or any injury or damage I cause to anyone else.

In other words, I still have the same automobile contract I had before. The only difference incorporated into that contract is what we call basic protection or no-fault, whichever way you want to describe it.

I just do not understand why there would be any problem. There is no problem as it exists now, no matter which State I drive in, and I do not see where there would be any problem elsewhere. For example, if two out of State drivers come into Massachusetts, one from New York, one from New Jersey, and collide with each other, obviously their particular policy applies and the liability question would be the problem. Neither one of them have no-fault.

There is one exception to that in that under our law they would not be able to sue in our courts for pain and suffering if there is medical expenses that exceed \$500, because that happens to be a peculiarity of our law. Insofar as being protected, they are protected whether the accident happens in Massachusetts or elsewhere.

Mr. SUTCLIFFE. You do not see any problems with availability of courts or choice of laws when jurisdictions have differing concepts of auto accident recovery?

Mr. McGOWAN. I really do not, Mr. Sutcliffe. We have some differing concepts now, of course, but whatever gap might exist in a different approach to no-fault seems to me will be picked up by the liability provisions, which might be one of the advantages of retaining the tort liability system.

Senator Cook. If you had two parties each from different States other than the State of Massachusetts, the convenience would be not to sue in Massachusetts anyway under the diversity of citizenship, would it not, so we really have no problem?

Mr. McGOWAN. I see what you mean, Senator. I agree.

Mr. SUTCLIFFE. I suggest perhaps for the record we can supply some choice of laws problems which would be created on a State by State basis.

Senator COOK. I do not disagree with that, but I think you face the situation where he already has two options. He already has the option to sue in his own State or to sue in the State of the residence of the other operator. If there happen to be any problems involved in his own State, he can sue in the other. If there are problems in the other State he can sue in his own.

Mr. SUTCLIFFE. The problem would arise if he chose a district where the choice of rules law said that you must apply the laws in the jurisdiction where the tort occurred, and if that was the situation you would have to apply Massachusetts law which does not apply for tort liability at certain levels. So there would be some confusion.

I think the other point I would like to ask is under a national no-fault approach with a residual tort liability as proposed in S. 945, would it be necessary to have an extraterritorial policy as such or tort liability protection for those losses covered on a first-party basis? For example, in the Massachusetts situation you have to have your first-party coverage, your tort liability coverage above the first-party coverage; you also have to have extraterritorial coverage for all amounts because you do not know what jurisdiction you might have an accident in and be liable for. Under the Hart proposal you would not have to have liability insurance for those coverages above the first-party basis. Would there be any cost advantages to proceed under the national approach where your exposure to liability is only above the first-party coverage?

Mr. MCGOWAN. Of course the exposure to liability is only above the first-party coverages in our cases, too, but the answer is substantially lower. Mr. Sutcliffe, in all honesty, I do not know whether there would be any cost advantages or not. We do not have any figures to know whether there would be any cost advantages under a no-fault system altogether. I would have to say I just do not know the answer to that question. I would like to say, though, Mr. Sutcliffe, we would like to pursue that. It expresses a new thought to us.

Please understand that we are not here in an adversary position. When I said in my statement that we are really anxious to find a solution that will be best for our customers, we really mean it, because if we do not we are not going to be in this business very long, and I like this business. It is just that we have a difference of opinion in some areas as to how best to arrive at that kind of solution. But I tell you we will pursue that question. Perhaps you have already pursued it, but we would like to see what we can come up with, and if we come up with anything meaningful I am sure we will submit it to your committee.

Mr. SUTCLIFFE. I would certainly appreciate that. Let me make clear for the record any questions posed are not in an effort to create an adversary environment but only to learn more about this very difficult problem.

Mr. MCGOWAN. That is just what we are trying to do, too.

Mr. SUTCLIFFE. Thank you.

Senator HART. Gentlemen, thank you very much.

Mr. MCGOWAN. Mr. Chairman, I want to thank you and I want to tell you very sincerely we certainly appreciate your patience and courtesy. I am sure we have taken an awful lot of your valuable time, and you have been very courteous to us and we appreciate it.

(The statement and exhibits follow :)

STATEMENT BY ROBERT V. MCGOWAN, PRESIDENT NATIONAL ASSOCIATION OF  
MUTUAL INSURANCE AGENTS

Mr. Chairman and gentlemen of the committee, my name is Robert V. McGowan of North Attleboro, Massachusetts. I am the owner of the R. V. McGowan Insurance Agency, Inc., in North Attleboro, which I founded and have operated since 1954. I am also the current president of the National Association of Mutual Insurance Agents, an organization of more than 18,000 independent property and casualty insurance agents with members in nearly all fifty states, and with headquarters in Washington, D.C. Accompanying me here today are Lee E. Walton of Jackson, Michigan, Immediate Past President of our Association and Chairman of our Federal Legislative Steering Committee, and George G. Potts of Washington, D.C., our Director of Government Affairs.

The primary objective of our Association is to do all things necessary to help its members better serve the public. In our 40-year history we have demonstrated a willingness and ability to work for needed change within our industry. We have advocated positive steps for improving our product, to the end that it will provide the best protection at the lowest possible price to the insuring public.

It has been reported that nearly 70 percent of the property and casualty insurance written in the United States is handled by independent insurance agents. That figure suggests at least two important and related ideas: That we have almost constant contact with a large majority of the insurance-buying public; and also that we have first-hand feedback of their views on what is good and what is bad about our business.

I cannot overemphasize the influence that this knowledge has had in defining the position of our Association on the matter of automobile insurance reform legislation which is before this Committee, and which I am privileged to bring to your attention at this time.

Mr. Chairman, let me say at the outset that automobile insurance is no longer a product that one may choose to buy or not to buy; it has become a practical necessity. The advent of compulsory insurance and financial responsibility laws, plus the increasing incidence of automobile accidents and the larger judgements resulting from them, require the purchase of insurance to protect one's property and standard of living. It is little wonder then that the principal product sold by the independent agent is automobile insurance.

On previous occasions at House and Senate hearings there have been implications, as well as testimony, challenging the need for the services of the agent in the marketing of automobile insurance. This proposition is completely unknown and irresponsible. To fully appreciate the many and varied implications of the independent agent's involvement in the sale and servicing of automobile insurance, I ask for permission to insert into the record at this time as Exhibit "A," a description of just some of the myriad duties performed by the independent agent in looking after the insurance needs of his automobile policyholder.

I would call your attention to one of these areas which I feel is directly relevant to the subject under discussion here, and that is the contributions made by our members through their state/regional and national associations as well as individually, to programs concerned with safety and protection of the consumer. They have supported the leading safety organizations in the nation, including the National Safety Council and the Insurance Institute for Highway Safety, and annually distribute literally millions of safety messages to the many clients they represent. Many of our state/regional associations maintain speakers' bureaus and provide, without cost, a variety of programs on safety and insurance for service clubs and other groups. The independent agent is indeed a vital part of the significant endeavor to promote a safer America.

With these few introductory remarks, Mr. Chairman, I hope I have conveyed to the Committee why the independent agent is so deeply concerned with seeking meaningful solutions to automobile insurance problems. In the final analysis, the insurance business is a business of trust, principally because of the intangible nature of the insurance contract, and the independent agent who sells and services that contract indeed becomes the contract himself.

On that basis, I hope I am not being too presumptuous when I say there is probably no one in this room today who recognizes the need for change in our present system of compensating auto accident victims more than the independent insurance agent. However, it is just as true that there are widely differing views in this room as to the degree and the means of bringing about that change.

For example, S. 945 calls for the complete abolition of our present tort liability system, in favor of a "pure" no-fault system. Moreover, this proposal in effect would turn over regulation of the automobile insurance business to the Federal Government. The National Association of Mutual Insurance Agents unalterably opposes these concepts.

All of us are aware, I am sure, of the principal arguments put forth by the proponents of no-fault automobile insurance: lower costs to the insurance buyer; faster payment of benefits; assurance of the availability of the insurance; relief of court congestion; etc. But I suggest, Mr. Chairman, that as commendable as these goals are, implementation of a complete no-fault system in no way guarantees their achievement. In fact, at this point in time at least, we see very little chance of all these goals ever being reached under such a system.

It seems to us that to do away with the tort liability system and replace it with a completely different and untested concept which all the states must adopt almost immediately is to invite chaos. A more prudent approach would be to begin on a limited basis and permit the system to change in an evolutionary manner.

#### MOTORISTS' INSURANCE—PROTECTION PLAN

I would like to propose to you a program which our Association earnestly believes can go a long way toward solving the present automobile insurance problems and, at the same time, ultimately guarantee lower costs, faster payments, readily available coverage, and less crowded courts. The National Association of Mutual Insurance Agents has developed a program, entitled "Motorists' Insurance—Protection Plan," which we recommend be given careful consideration by this Committee.

This plan is a comprehensive package of legislative proposals to be enacted at the state level. It is designed to provide speedy, automatic *basic* injury compensation for all auto accident victims, and to afford the greatest possible protection for the nation's motorists by implementing stringent driver and highway safety measures and improving the present legal system. A copy of the program is attached to my statement as Exhibit "B," and I respectfully request that it be included in the record at this time.

I would like now, Mr. Chairman, to go through each section of our proposed program and to explain how and why we feel this plan is capable of bringing about the desired changes in our present system.

#### SECTION I—HIGHWAY SAFETY

Section I calls for more stringent laws aimed at promoting highway safety. In the discussions and writings of those who propose no-fault systems, usually little if any mention is made of improved highway safety. Some cynically seem to consider the highway accident as an inevitable occurrence. There is no question, however, that a reduction in the number of highway accidents would go a long way toward curing many of our problems, such as the high cost of automobile insurance and the impact of auto cases on court work loads.

Independent insurance agents have long been concerned with highway safety, and we are convinced that meaningful programs to prevent highway accidents would have worthwhile results. For example, our Association several years ago actively worked to get so-called "habitual offenders" laws enacted in New Hampshire, North Carolina and Virginia. In the latter state, we are informed that many hundreds of habitual traffic offenders have been removed from the highways since the measure was passed. Hopefully, studies will be made that can reveal a significant drop in accidents directly attributable to the stringent law.

Mr. Chairman, we are convinced that much more could be done to improve highway safety if greater concentration were placed on the motorist as perhaps the major cause of highway accidents. Studies have shown alcohol and drug use as inordinate causes of traffic accidents. We maintain that driving is a privilege and not a right. Accordingly, our plan sets forth certain proposals to deal with the accident producers, and we will continue to support, as I outlined earlier, all meaningful legislation to protect the careful motorist from those who abuse their driving privilege.

Still other studies have shown that many drivers do not have the mental or physical capacity to operate today's high-powdered vehicles. In addition, many

vehicles are allowed to fall into such a state of disrepair as to make them a menace to others. We maintain that just as pilots and aircraft are given periodic examinations to assure air safety, motorists and vehicles should be inspected regularly to improve highway safety.

Automobile safety devices, such as safety belts and motorcycle safety helmets, have been shown to be extremely effective in the prevention of highway injuries and deaths. In this section of our plan, we propose and will support measures to require installation and mandatory use of such devices.

Finally, we are proposing measures which we believe will enable those persons charged with the enforcement of our traffic laws to be more effective.

Mr. Chairman, we do not claim that the proposals in Section I of our plan are the ultimate solution which will prevent *all* highway accidents. Much more can and should be done, for there is a definite need to improve the highways and the vehicles which we use. In the latter case, of course, there is legislation now before this Committee. I will comment later on that legislation. In the meantime, suffice it to say that our Association will concentrate its safety efforts on the driver, for we believe this is an area in which we can be most effective and an area which has been given far too little attention up to now.

## SECTION II—THE LEGAL SYSTEM

Section II calls for reform of the legal system as it applies to automobile insurance claims. No-fault advocates often portray delay in the courts as to make it appear that every litigant in every jurisdiction must wait many years to have his case brought to trial. They contend that this delay would disappear if automobile accident cases were removed from the courts.

From various studies conducted to date, it has been concluded that such delay does not exist in every court and affect every litigant. Nevertheless, it is apparently a major problem in many metropolitan jurisdictions which handle cases involving a considerable percentage of the nation's population, and to that extent, can be considered a serious problem.

But simply removing automobile accident cases from the courts will not solve the problem of delay where it does exist. If such cases were removed and no other remedies made, any relief in the judicial workload would be temporary, since continued growth in population would produce more cases of other varieties to burden existing judicial manpower. Thus, it is apparent that courts and judicial personnel must be increased to meet population growth, just as utilities and other public services expand their facilities to meet new demands.

In addition, we recommend employing a system of mandatory arbitration of all lawsuits involving claims under \$3,000. Such a system has been in use in Philadelphia for some time now and has been found to successfully reduce court delay, has proved to be a less expensive procedure to the litigants, and has resulted in the equitable disposition of smaller cases. We feel its more widespread use would prove equally successful in other jurisdictions. By removing these smaller claims from our regular court dockets—especially since many legal experts maintain that such suits constitute a great percentage of the total auto accident cases—the legal process would be markedly improved.

## CONTINGENT FEE SYSTEM

A second area of our legal system in need of reform is the controversial contingent fee system. It has been said, and rightly so, that the contingent fee system provides the means through which a man of modest means may gain legal representation by a highly skilled and competent trial counsel. However, others contend that it is unfair for a portion of one's legal recovery to be shared with the lawyer who represented him.

In our opinion, the contingent fee has a place in our legal system, but because it is often misunderstood by the client and sometimes abused by the lawyer, it must be effectively regulated. Our plan proposes to do this by placing control of the size of the contingent fee and supervision of its use in the hands of proper legislative or judicial authority.

It also seeks to correct some of the misunderstanding by requiring fee arrangements and closing statements to be in writing, and by requiring the client to sign the agreement and be given a copy of the closing statement.

If such remedies are undertaken, we are reasonably certain they will bring about a meaningful reduction in the "cost" of the tort liability system.

## COLLATERAL SOURCE RULE

There is no question that the Collateral Source Rule has a marked effect on the problem of automobile liability insurance cost. Actuarial studies indicate that elimination of double payment of certain items in the average personal injury claim would result in premium savings of between 15 and 19 percent. These savings are based on estimates that between 70 and 85 percent of the American population is covered by collateral benefits providing medical and hospital costs, wage continuation and the like. With this figure constantly rising, it means that at least seven or eight of every ten successful claimants will recover twice or more for some economic losses.

Here is an example of why the rule leads to inequitable results: The plaintiff is allowed to introduce evidence of the economic "loss" sustained as a result of his injury, such items as expenses for medical treatment, hospital and nursing care, rehabilitation services and "lost" wages. Even if all these claimed expenses have been completely paid to the plaintiff at the time of trial by insurance or other collateral sources, the defense is *prohibited* from introducing evidence of such payments. Thus, the jury is led to believe that the plaintiff had to pay these expenses personally or that he has been subjected to continuous financial worry because they are still unpaid at the time of trial.

Our proposal would permit the jury to be given *all* the facts about the case, including evidence of remarriage of a surviving spouse, which is now generally inadmissible in actions for wrongful death.

We have faith in the jury system and believe that, given all the evidence, an equitable determination of actual damages will be made. To this end, our plan proposes that the Collateral Source Rule be modified to allow the introduction of all evidence relative to the nature and extent of the benefits and services received or to be received by the claimant. If this is not done, we feel the cost to the insurance-buying public will become even more burdensome.

## CONTRIBUTORY NEGLIGENCE

Another change needed in our legal system in our opinion involves the rules of contributory and comparative negligence. In most states, contributory negligence of any kind on the part of the person seeking recovery for damages sustained, bars his recovery. In a few states, the court (or jury) is permitted to determine the percentage of total negligence attributable to *each* party. If, for example, the plaintiff is found to be 30 percent negligent, he may recover up to 70 percent of the total amount of damages sustained.

Of those states now employing the comparative negligence rule, the one used in Wisconsin, which has some 40 years of practical operation and judicial interpretation, is said to be preferable by legal experts. We strongly urge the adoption of the Wisconsin comparative negligence rule wherever practical.

## FRAUDULENT CLAIMS

Still another improvement called for in the legal system in our opinion is the imposition of strict sanctions upon those who intentionally make false or fraudulent claims for personal injury or property damage and upon those who assist them in such action.

Unfortunately, some persons look upon the personal injury reparations system as a means of making easy money. Although the number of false or fraudulent claims made annually is undoubtedly small in comparison to the total number of claims, they do constitute a serious threat to the integrity of our legal system. The dollars they take from the system are at the expense of the honest insurance-buying public and those whose personal injury claims are valid.

The only significant means which can be employed to combat the filing of false and fraudulent claims, it seems to us, is to provide stringent penalties for those who engage in this practice. Our Association's plan therefore proposes that where local laws are not adequate to cope with this problem, strong legislative measures be enacted.

## OTHER REFORMS

Finally, we believe that several other more technical improvements in the legal system should provide significant impetus to solving the problems of our automobile reparations system. The historical "ad damnum" clause—the means by which the litigant could be shown to be demanding monetary damages instead

of some other form of relief—has given rise to much abuse and dissatisfaction and should be eliminated. It simply has no place in a modern legal system.

Also, those practices and procedures which provide for limitation of the right to voluntary dismissals or non-suits, the right to a split trial on issues of liability and damages, modification of appeal bond rules, summary judgment, mental and physical examinations of litigants, demands to admit the genuineness of documents or relevant facts, and offers of settlement, judgment and damages—these should be adopted in those jurisdictions which do not now have such rules or which have rules which are not as workable as those proposed here.

### SECTION III—THE REPARATIONS SYSTEM

Section III, Mr. Chairman, is perhaps the real heart of our proposed program. It provides for some significant changes in our present system for compensating auto accident victims. If adopted, in our opinion, it would assure speedy, automatic *basic* injury benefits for all automobile accident victims, but with a minimal disruption of the important tort liability concept.

Under the NAMIA plan, every automobile liability insurance policy covering any non-fleet private passenger motor vehicle would include the following minimum benefits, payable immediately *regardless of fault*:

(1) Medical and hospital expense coverage up to \$2,000, subject to an optional \$250 deductible; (2) disability coverage of 85 percent of gross income lost, commencing 30 days after the accident and continuing for 52 weeks and subject to a \$500 per month maximum or a total of \$8,000; (3) uninsured motorist coverage of at least \$10,000 per person and \$20,000 per accident; and (4) accidental death benefits of at least \$5,000 when the death is a direct result of the accident.

However, the policyholder would have the right to reject the automatic coverages listed above for himself and members of his family. Where a guest passenger is concerned, these coverages would not apply if they were provided under his own auto insurance policy.

It is claimed that a major problem exists with relation to the number of persons who are injured in motor vehicle accidents and receive little or no compensation for the economic loss they suffer. While we recognize the existence of some inequities in the present system, we are opposed to the elimination of the fault system and the loss of the concept of personal responsibility for fault in accidents that goes with it.

On the other hand, as independent agents who come into daily *personal* contact with insureds who are victims of automobile accidents, we are well aware of the value of a system which would provide for *immediate and automatic* payment of basic personal injury benefits, *regardless of fault*. This we have proposed in our plan.

Again, however, we do not propose that the purchase of such coverage by the policyholder be *mandatory*. Many of the proposals which are now, or will be, before this Committee seek to force all motorists to purchase these *first-party* coverages as a condition to being permitted to operate a motor vehicle. Under such plans, no provision is usually made for the responsible motorist who has adequately protected himself and his family against such losses through other sources of indemnity. There is no way for him to avoid purchasing what amounts to unneeded coverage. He is forced to pay another premium for it.

The plight of this "overinsured motorist" is further complicated under some "pure" no-fault plans which call for a collateral source setoff. With a setoff, the motorists who sustained medical and hospital expenses as the result of an auto accident would not recover those expenses under his "pure" no-fault automobile policy if, for example, they had been paid by his separate medical and hospital insurance policy.

The net result under these circumstances is that the automobile insurance policy becomes *secondary* instead of *primary* coverage. Presumably, this is the area where the proponents of a complete no-fault system expect to realize cost savings; in effect, it is simply a matter of *less coverage* being provided by one's automobile insurance policy for *less money*.

Furthermore, it seems to us grossly unfair to force a person to pay for first-party coverage under which he will not be able to recover. Such persons will actually subsidize those who do not carry additional insurance. Even in the absence of the collateral source setoff, it seems inconsistent to us for plans which

are offered for the stated purpose of reducing the cost of automobile insurance, to force persons instead to buy protection they do not need.

Thus, we propose to give each policyholder the option to determine for himself whether the coverage offered is needed for his own protection and that of his family. He would not be forced to pay an additional premium for unneeded coverage. It should be noted that our proposal does not give the policyholder the right to reject the coverage available for the protection of guest passengers who are not otherwise covered.

#### PAIN AND SUFFERING

The entire area of damages for pain, suffering and inconvenience has been a major subject of debate for years. Critics of such awards claim that there is a tendency to overdramatize and exaggerate automobile accident injuries in order to collect the largest sums possible. And now many of the proposals which seek to "reform" the existing automobile accident reparations system call for a limitation of the right to recover such damages. It is even suggested by some that the right of recovery should be eliminated completely.

While we agree that automobile insurance costs could be lowered if the recoverable damages for pain, suffering and inconvenience were in some way reduced, we cannot go along with those who would *abolish* such recoveries altogether. On the contrary, we believe that pain, suffering and inconvenience are a very real and important part of the determination of damages in personal injury cases and should continue to be compensable for all such victims.

A person who suffers such injuries as the result of the carelessness or intentional conduct of another, sustains a loss as real as the hospital and medical expenses he incurred. He should not be denied recovery for the pain, suffering and inconvenience he has endured, simply because its elimination might lower insurance costs. There is, of course, an element of uncertainty in deciding just how much a person has suffered, but this is also true of the entire damage picture when money is offered to people for their injuries. Money cannot replace a lost limb or eye but there is simply no other measure yet devised.

Accordingly, we feel that some objective criteria should be established in determining this issue and it should be subject to reasonable limitations, especially in the less serious cases. Thus, our proposal suggests the following standards for pain, suffering, and inconvenience be adopted for all motor vehicle accident cases:

Up to 50 percent additional damages when medical and hospital expenses amount to \$500 or less;

Up to 100 percent additional damages when medical and hospital expenses exceed \$500.

In cases of death, permanent disfigurement, loss of limb, permanent loss of a bodily function and other exceptional circumstances, these standards may be raised by the court.

Until a better means of determining such damages is conceived, we believe these standards will prove fair and equitable to all concerned, and will at the same time provide reasonable safeguards against those who would attempt to profit from such injuries.

#### OTHER FEATURES

There are several other key features in this section which should be called to your attention:

Excluded from coverage are those persons who have committed certain specified acts in conjunction with the operation of the automobile at the time they were injured, such as intentionally injuring themselves, driving under the influence of alcohol or narcotics, operating without a valid license, etc.

Insurance companies are permitted—in fact encouraged—to offer broader coverages than the minimums we have stated here, and it is anticipated that healthy competition will provide a wide choice of higher limits first-party coverages for those who desire them.

After a claimant has been paid the automatic basic personal injury benefits, his insurance company may seek reimbursement from the party at fault (if any) or that party's insurance company, and the issue of liability and reimbursement between insurance companies should be decided by mandatory inter-company arbitration, thereby reducing expenses and the burden on the courts.

When insurance companies make advance payments and settlements to the

insured policyholder, such payments and settlements should be credited against any subsequent recovery by the policyholder and should not be construed as an admission of liability on the part of the insurance company.

Loss of income damages should be defined so that juries can take income tax savings into account when they are called upon to set damage awards.

#### SECTION IV—OPEN COMPETITION

Two major areas of concern both within and without the insurance industry are dealt with in Section IV of our proposal.

While opinion within our own Association is still rather sharply divided on the question of "competitive" versus "prior approval" rating laws, the majority of our board of directors felt that insurance companies must be allowed a certain amount of freedom in the marketplace if the entire problem of automobile insurance cost and availability is to be solved. Thus, our plan calls for enactment—in those states in which it is warranted—of competitive rating laws in order to assure the public of the lowest possible price, best service, latest innovations and coverage availability.

It should be noted, however, that unlike some present competitive rating laws, our proposal requires that policy rates be submitted to the State Insurance Commissioner for his information and that the Commissioner approve reasonable rules and statistical plans which must be used by insurance companies in recording and reporting their loss and expense experience.

It seems to us beyond debate that the state authority charged by law with the responsibility for regulating rates must have full and complete knowledge of the rates being used and of the loss and expense experience upon which such rates are based. He should have all this information readily at hand, without the necessity of sending examiners into company offices to obtain it. Nor should he be forced to tell inquiring citizens that he has no record of the rates being charged.

#### POLICY CANCELLATIONS

A second area of concern is the well-publicized practice of automobile insurance policy cancellations. The NAMIA plan outlines what we believe to be a practical approach to this problem—one which more and more insurance companies are adopting: Following a reasonable underwriting period, the policy may be cancelled by the company during its term *only* for nonpayment of the premium and suspension or revocation of the driver's license or motor vehicle registration. This applies to either the policyholder or any other operator residing in the policyholder's household or who customarily operates the automobile.

Our proposal further provides for specific notice to the policyholder by the insurance company of its intention to cancel or non-renew the policy, and that reasons for such actions be provided to the policyholder upon request.

Mr. Chairman, the broad package of proposals we have made here is offered as a balanced blending of the various points of view on how best to improve our existing automobile insurance reparations system. It encompasses what we believe to be the best features of many of the proposals being made. Admittedly, it is perhaps not exactly what any one segment of our industry would like to have, but we feel it does offer an accommodation for everyone concerned.

A virtue of our program is that it will allow for a major step forward without burning our bridges behind us. Moreover, it allows for future testing so that we may observe and evaluate public acceptance without losing the desirable features of the present system and without being committed to an irrevocable course. We offer it as a sound, *evolutionary* approach to improving the auto insurance reparations system.

#### IMPLEMENTATION

And now, Mr. Chairman, I would like to offer to this Committee what our Association feels is the most plausible method for implementing our program.

In the first place, it should be emphasized that we firmly believe that such a program can and should be implemented at the state level. We agree with Secretary of Transportation Volpe that the "sense of the Congress" be "subject to the admonition . . . that the Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation," and that operation and regulation of the automobile insurance business should continue to be by the private insurance industry at the state level.

However, we disagree with the Secretary and others who apparently feel that

a national "pure" no-fault automobile insurance system is both desirable and inevitable. To the contrary, we see no concrete evidence that such a system is in the best interest of all concerned, particularly the insurance-buying public. We believe that the public does not really want a virtual elimination of the present tort system in favor of "pure" no-fault. What it does want is change for improvement—and that is what we offer here today.

Accordingly, we suggest the following four-step approach for implementation of NAMIA's "Motorists' Insurance—Protection Plan":

(1) The Congress should adopt a "Concurrent Resolution" expressing its intent that the states enact, no later than *July 1, 1974*, legislation establishing a private industry-administered and state-regulated automobile insurance reparations system built upon certain of the principles enunciated by the Department of Transportation Study and embodying all of the features of the NAMIA program.

(2) Interested organizations—such as the Council of State Governments, the National Association of Insurance Commissioners, and the various insurance associations, including our own—should be encouraged to work together to draft model legislation based on the "sense of the Congress" as a guide to the states in developing their statutes.

(3) The Department of Transportation should be directed to monitor state actions and to issue periodic reports analyzing the progress being made by the states.

(4) On or after *July 1, 1974*, the Department of Transportation should submit to the Congress a complete report on action by the states in adopting such an automobile insurance reparations system by statute, so that the Congress may be in the best possible position to take whatever action it deems necessary and appropriate at that time.

In adopting a "Concurrent Resolution," we suggest that the Congress give careful consideration to the general approach contained in House Concurrent Resolution 241, but with appropriate modifications that would reflect the approach we have outlined to you here today.

As President of the National Association of Mutual Insurance Agents, I pledge the complete support of my Association in any and all endeavors to enact such a program in every state by 1974.

I urge, Mr. Chairman, that this pledge not be taken lightly. Our Association made a similar promise some 17 months ago to this Committee in connection with a proposal to establish the Federal Insurance Guarantee Corporation. In the intervening months, efforts by our Association and others have resulted in passage of insolvency laws in 33 states to date, and we are continuing our efforts in the remaining state legislatures.

Based on our recent successful experience with state insolvency legislation, and given this period of time within which every state legislature will have had at least one full regular legislative session to act on reform of the automobile insurance reparations system, I am confident that a favorable report can be made to the Congress by *July 1, 1974*.

This proposed approach, Mr. Chairman, would in our opinion achieve the basic goal of establishing an improved automobile insurance reparations system throughout the country; but at the same time it would preserve the traditional roles of the states and the private insurance industry. Equally important, moreover, it would allow the Congress of the United States to fulfill its responsibility to the American motoring public.

#### STATE VS. FEDERAL REGULATION

Much has been said about the advantages of a federal program over programs developed and regulated at the state level. Emphasis has been put on the efficiency and economy of uniformity, on the need for prompt action, and on the record of the states in comparable undertakings such as Workmen's Compensation. Certainly there is something to be said for these arguments, but in my judgment the record of the states, for the most part, is favorable when all factors are considered.

The Congress in its wisdom in 1945 passed Public Law 15, better known as the McCarran-Ferguson Act, which left the matter of insurance regulation to the states, subject to some restrictions. Since that time, the field of regulation has been a changing, evolving phenomenon for the states. But while these changes have been taking place, the industry has continued to function soundly and properly. And the regulation of our industry by the states has maintained a level of effectiveness at least equal to that of any comparable industry.

On the other hand, during this same period, the Federal Government has had the opportunity to perform in the fields of Medicare and welfare—both somewhat related to insurance. I would suggest with all respect that the federal performance has not proven superior in these fields.

On the subject of the Federal Government's performance in the regulatory field in general, I ask permission at this time to enter into the record as Exhibit "C" a copy of a very perceptive article on the subject which appeared in the February, 1971, issue of our monthly magazine, *Mutual Review*. It was written by Mr. Louis M. Kohlmeier, Jr., who has been a Washington correspondent for the *Wall Street Journal*, and in 1965 received the Pulitzer Prize for national reporting. He is also the author of "The Regulators, Watchdog Agencies and the Public Interest," published by Harper & Row in 1969.

We believe Mr. Kohlmeier shares our belief that the state approach to regulation of an industry such as ours is preferable because it is flexible and responsive to geographic and individual needs; an opportunity for research, for innovation and trial and error.

The important thing is that if one of the fifty states undertakes an experiment and fails, it has not brought the whole country down with it. If, for example, the Massachusetts no-fault experiment is successful, we have a good foundation on which to build for the other states. If it is not, we have the opportunity to adjust to the mistakes that may have been inherent in that program.

Of equal importance is that the insurance industry, under state regulation, has been free to adjust at the local level to needed innovations brought on by a constantly changing economy and population. The automobile insurance policy itself has evolved from a rather simple contract to a more streamlined version to meet today's needs. The Family Automobile Policy is a good example. It is designed for the modern family in which two or more cars is not uncommon. Moreover, these policies are universal in concept. In my own state of Massachusetts, for example, today one buys an automobile insurance policy that takes care not only of the statutory requirements there, but all the requirements of the other states as well. Thus, although the states often have requirements peculiar to each, the policyholder who purchases his insurance in Massachusetts has a policy which will meet the requirements of, say, Texas, should he be involved in an accident in that state.

If state regulations of insurance is operating satisfactorily, as we contend, you might very well ask then why you are receiving complaints about policy cancellations, high premiums, or improper attention to claims. We do not suggest they be taken lightly. They are terribly important. As professional agents we have as great a concern as you for the welfare of these people. Most of them, after all, are our clients. But I submit that the criticism of our industry, considering its tremendous exposure to an enormous number of consumers, may very well be moderate. May I suggest that criticism aimed at drug companies, automobile manufacturers, the railroads, the Post Office—these too have been subject to heavy criticism, especially in recent years.

Mr. Chairman, I am not trying to be facetious, nor do I mean to be unkind to other industries, but it is a simple fact that in the past 25 years this nation has gone through an unprecedented transition, brought on by an explosion of the economy and the population. For our industry to have performed perfectly and to have avoided criticism during such a period would have been miraculous indeed. Can anyone truly say that the insurance industry would have been less criticized had it been under federal regulation since 1945?

There are further aspects of this question of state versus federal regulation. Takeover by the Federal Government of regulation of the automobile insurance business can only be followed ultimately by the redirection of state insurance premium tax revenue to Washington. How long will the very philosophy that suggests federal involvement in the automobile insurance business be satisfied not to tap premium taxes and fees now collected by the states?

In 1968, the states collected over a billion dollars in premium taxes. A report prepared by the Insurance Industry Committee of the State of Ohio for that year is hereto attached and made part of this statement as Exhibit "D," with the permission of the Chairman. It shows in simple figures what premium taxes mean to each state, especially in these days of grave financial problems for them.

Finally, should the Federal Government become involved in what is now handled by the state insurance departments, it will mean the usual regional offices, a panoply of federal civil servants, with all the cost and expense that go with them. To establish almost overnight a federal system of regulation and control

which has been developed in each state over many years would not only prove costly—it would undoubtedly lack the understanding of local conditions so vital in an industry such as ours.

MOTOR VEHICLE GROUP INSURANCE ACT—S. 946

And now, Mr. Chairman, I would like to address myself to S. 946, a bill which would permit the marketing of "group" automobile insurance by removing existing state laws, regulations and other similar restrictions which may prohibit such practices.

I want to say emphatically that the National Association of Mutual Insurance Agents is *not* opposed to the group marketing of automobile insurance per se. We cannot, and we do not, oppose *any* marketing system of insurance, so long as it is legal, ethical and above all, in the best interests of the insurance-buying public. As professional insurance agents, we recognize such marketing techniques as viable and modern with potentially great benefits for the public.

But, what we do oppose is any so-called "group" marketing scheme which would mislead the public into believing that such plans would automatically guarantee them automobile coverage at lower costs; and that eventually, all employers would offer automobile insurance as a standard "fringe" benefit of their employment. In our opinion, based on those "group" automobile insurance plans operating thus far and with which we are familiar, such benefits do not exist.

As to the possibility that most employers of the future will be offering such plans to their employees, again we do not agree. Once an employer or "group sponsor" has established such a program for his employees, he is faced with several problems—both real and potential:

(1) There is no evidence that the same undesirable risk (from an underwriting point of view) who is dropped from coverage in the "ordinary channels of insurance marketing on an individual basis" (S. 946, page 2, lines 12 and 13) will not also be dropped from a so-called "group" automobile insurance program. The "cream skimming" that exists today in the normal market will exist in the "group" market as well, unless specific measures are adopted to prevent it. Many of the consumer complaints you have received have been generated by cancellation, non-renewal or refusal of auto insurance by insurance companies. We feel that without careful regulation, "group" marketing programs will compound the so-called "residual" market problem rather than alleviate it. Thus, the already nagging problem of selectivity will be merely shifted from individual policies in the normal market to the "group" policies of the employer-sponsored plan. I would ask these employers: Do you really want to invite still another potential employee-relations problem in a field generally unfamiliar to you? I think not.

(2) If an employer decides to provide a "group" automobile insurance plan for his employees, he will immediately assume the heavy burden of being responsible to the employees for the plan's operation, even though an insuring company is actually writing the program. Proper coverage to meet specific needs of the "group" will have to be provided; many employees will prefer the payroll deduction methods of paying premiums, but many others will not; claims handling and the resulting settlements will greatly affect the employee-employer relationship, especially of course if the insured employee is unhappy with the results. In other words, at least in the eyes of the employee, the employer will assume all of the duties and responsibilities that go with being the insurance company. We would ask: Are most employers really in a position to assume such a role? I doubt it. Furthermore, Mr. Chairman, in this day of vast conglomerates would we not be returning to the repugnant "company store" method of merchandising? In other words, it is not unreasonable to assume that a subsidiary of a conglomerate would place its "group" automobile insurance plan with an insurance company also owned by the conglomerate. I ask you, how much leverage would an employee have for suing a disputed claim against an insurance company which is in effect owned by his own employer?

(3) When employer-sponsored "group" automobile insurance is established, what will be the feelings of those employees who either do not wish such coverage through the "group" plan or who do not qualify because they do not own or operate an automobile? Most, if not all, present benefits affect *all* employees. But would not providing automobile insurance (even if it is neither a payroll deduction plan nor paid for by the employer) lead to discrimination charges against the employer by non-automobile-owning employees? I believe so.

U.C. BERKELEY LIBRARY

(4) It is often suggested that premiums for the "group" automobile coverage be deducted from the employee's earnings. While at first glance this seems a rather simple method of handling premium payments, in fact it can lead to problems when the employee's paycheck is thereby further reduced. In addition, if the employer does not offer a payroll deduction system, what is available for those employees who now enjoy the convenience of financing their premiums? Will this method of paying be offered, and if so, by whom?

(5) It is a well known fact that automobile insurance rates have increased steadily for many years. If this trend continues, the employee's take-home pay (assuming it is payroll-deducted) will decrease correspondingly. This situation could cause employee resentment directed erroneously at the employer who in many cases is already withholding up to 20 percent of the employee's gross salary for other "fringe" benefits. As this pattern continues, there will be renewed pressure on the employer to assume part or all of the premium. Are most employers prepared for this eventuality?

(6) Still another area of concern to the employer considering a "group" automobile insurance program is the procedure to be established in soliciting and servicing the insurance. Most proponents of these schemes point to a reduction in cost to the insured because they eliminate the agent or broker. But who is going to promote the coverage available under the program, and more importantly, who is going to service it? It seems highly unlikely that a "group" insurance employee is going to demand any less personalized service. If the employer provides it, this is an additional cost to him which he either must absorb or pass along in some way to the employee. Furthermore, there is a good chance that the basic services of the advice on coverage and assistance in handling claims would be furnished by another employee who might not have the professional expertise or technical knowledge required. On the other hand, if the insurance company provides this service, the cost would be reflected in the rates charged, just as it is now under individual policies in the regular market.

(7) Once a "group" automobile insurance plan is initiated, it is very doubtful that it can easily be terminated. If, for any or all of the reasons cited above, the employer (or for that matter the employees) becomes disenchanted with the program, what can be done about it? A change in insurance companies or a discontinuance of the "benefit" altogether can lead to much difficulty and displeasure on the part of all concerned.

Mr. Chairman, the problems I have cited and the questions they raise are not intended to be totally negative about the possible adoption of "group" automobile insurance plans which S. 946 would undoubtedly bring about. Many of these problems can be solved, and indeed some probably already have been. But I do believe that they should be considered seriously by anyone who is advocating, promoting or considering using "group" marketing of automobile insurance.

While I have dwelled mainly on the employer-employee relationship, I would point out a general flaw which exists in most, if not all, present "group" marketing plans. Most programs do not provide for allocation of expenses incurred by the program to the "group" itself. As a result, these expenses are charged to all of the insuring company's accounts. Thus, the individual policyholder of that company who does not belong to the "group"—either because of personal choice or because he does not qualify—actually subsidizes the "groups" policyholders. This practice, in our opinion, is grossly unfair and highly discriminatory. For example, most "group" plans now in existence provide "stop-loss" limits. If a loss exceeds these limits, it is not charged to the "group" and thus the cost falls on the company's other policyholders who are not eligible for the "group". Professor Bernard L. Webb, CPCU, who is a strong advocate of "group" merchandising, who has written perhaps the most authoritative book on the subject, entitled *Mass Merchandising of Automobile Insurance*, and who I believe served as a consultant to the Senate Antitrust Subcommittee in their earlier deliberations on this subject, refers to these "stop-loss" provisions in the "group" plans of the Michigan Credit Union League, the Farm Bureau Companies and others. He concludes on page 48 of his book, "Group merchandising is not practical unless a substantial pattern of premium is paid by the employer." Professor Webb then goes on to say, on page 59, "The inequitable allocation of expenses between collective programs and individual policyholders is a distinct possibility. Some insurers may be tempted to use this method of maintaining a low price structure in order to obtain large blocs of premiums. There would be little chance of detection of such improper expense allocation at the present time."

For several years now, the National Association of Mutual Insurance Agents has sponsored and supported legislation at the State level which would in effect

permit "group" marketing of automobile insurance. We have tried to emphasize that stringent safeguards were needed to prevent the insuring public from being duped into accepting a program which would ultimately prove detrimental to their insurance needs. Admittedly, we have enjoyed only a very limited success so far. But the point is, in those states which have enacted such laws, the insuring public is relatively well protected because our safeguards were provided for in the approved legislation.

Louisiana, about a year ago, enacted legislation that embodied our suggested safeguards virtually intact; and a similar law was placed on the books a little earlier in New Hampshire.

But perhaps the most revealing example I can give, Mr. Chairman, is the drama that took place just last year in New York State. After what many of those close to the scene labeled "a classic" example of the democratic legislative process in action, the New York legislature approved a measure that would allow for the "group" marketing of automobile insurance. And, due to the untiring efforts of our affiliated state association, the legislation included our recommended safeguards almost in their entirety. Unfortunately, however, those who apparently would establish such insurance marketing programs without the slightest concern about what the plan's ultimate effect might be on the individual participants, convinced Governor Rockefeller that the legislation was undesirable. The Governor exercised his veto power at the very last moment, and the legislation was killed.

To say that we were dejected would be an understatement. But then, an unusual thing occurred: *Insurance Superintendent Richard Stewart promulgated department regulations setting forth rather stringent standards for "group" merchandising of insurance in New York, and they included most of the safeguards we had advocated in the vetoed legislation!* Today, in New York State, we are confident that "group" plan participants enjoy the same type of protection that we are advocating here today.

Accordingly, Mr. Chairman, I offer the following *basic* "guidelines" which our Association believes must be followed in any "group" marketing plan for automobile insurance if the insuring public is to be protected adequately:

(1) Mandatory participation in the plan should not be required as a condition of employment or membership, nor should there be any penalty whatsoever for non-participation in the plan.

(2) The "group" should consist of a fair percentage—taking into account eligibility percentages common in present "true group" Accident and Health plans—of eligible participants, both initially and as long as the plan is in effect.

(3) Individual policies or certificates should be issued to all plan insureds whereby the premiums on such policies are paid to the insurer (or its agent), with or without payroll deduction.

(4) Insurance should not be issued to any "group" formed principally for the purpose of obtaining such insurance, or to persons who are not bona fide employees of the "group sponsor," except that the plan may provide personal property or liability insurance for the plan insured's immediate family.

(5) Every policy or certificate issued under the plan should contain a provision that upon termination of the plan insured's employment (or membership), such insured should have the right to convert his policy or certificate, for one year from the date of such termination, to an individual standard policy of insurance which provides him the same limits and type of coverage, and at individual policy rates already approved by the state insurance authority.

(6) The "group" policy or certificate of an insured should not be cancelled for any reason except for non-payment of premium during the policy term or the suspension or revocation of the driver's license or motor vehicle registration of either the insured or any other operator residing in the household of the insured who customarily operates the insured automobile.

(7) The insurance policy or certificate should be the same for each "group" insured, varying only as to the amounts of insurance and limits of liability in accordance with the particular state's statute.

(8) All persons eligible for the "group" insurance plan should be accepted by the insurer for the type or types of coverage offered by the plan.

(9) Automobile liability insurance provided to the "group" plan insureds should be excluded from the base used in determining assignments the insurer is to receive under the particular state's automobile assigned risks plan, provided that the rates of the "group" plan do not operate in such a manner as to eliminate or discourage an insured from insurance under the "group" plan.

(10) In order to qualify to write a "group" plan, an insurer (or its principal affiliate) should also be engaged in writing coverage offered for insureds other than "group."

(11) An insurer should not use underwriting standards for individual risk selection (this includes, but is not limited to, standards used in connection with any merit rating plan used in the "group" plan) in "group" plans which are more restrictive or less equitable than the standards used by that insurer, or its principal affiliate, in the sale of the same kind of insurance outside the "group" plan.

(12) Every insurer writing a "group" plan should keep and maintain separate experience data for such plan, including complete records of income, losses and expenses so that the actual experience of each "group" may be fairly and readily ascertained; in addition, under no circumstances should the insurer be permitted to include the "group" experience in the experience of the individual insurance written outside the "group" plan.

(13) Experience rating should not be applied to a "group" until after a specified and reasonable period of operation and should then be based on that specified preceding period; thereafter, such experience rating should be made annually.

(14) Any "group" insured who believes in good faith that his plan is not being operated in such a manner as to meet any of these requirements should have proper recourse to lodge an official complaint before the state's insurance authority.

Mr. Chairman, our Association believes that unless proper regulation is forthcoming through implementation of specific guidelines such as we have offered here today, so-called "group" marketing of automobile insurance will be allowed to run rampant to the ultimate detriment of many policyholders. We do not suggest, however, that if these guidelines are followed rigidly, many of the problems I raised earlier will be solved.

It should be pointed out, of course, that several of the principles I have outlined above are in direct conflict with parts of Section 3 of S. 946. We sincerely believe, however, that unless some reasonable and, in our opinion necessary, safeguards are applied to these new marketing plans, the resulting abuses could create even more problems for the insuring public than the concept is intended to eliminate.

#### MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT—S. 976

This legislation and similar measures can best be described perhaps as *long overdue*, Mr. Chairman. It is reported that the cost of motor vehicle damage is up some 28 percent in the past two and one-half years and is rising nearly twice as fast as the cost of injuries. It seems indisputable, therefore, that the design and production of safe motor vehicles having greater resistance to damage is a must if we are even to begin reducing the horrible carnage and property losses on our nation's highways and to begin lowering automobile insurance rates which are so closely tied to highway and automobile safety.

Earlier, I referred to specific proposals we have made to promote highway safety, principally aimed at the motor vehicle *driver*. In our proposed program, we purposely omitted references to the equally important problem of the *motor vehicle* itself. Our action was predicated on the belief that the Department of Transportation would issue meaningful regulations attacking the serious shortcomings in the automobile which in turn lead to the soaring costs of automobile insurance.

Since then, however, the Department of Transportation has issued bumper safety standards for motor vehicles. They are a beginning, but just barely. To be more frank, they are in fact inadequate and in our opinion will not help us make significant progress toward reducing automobile repair bills and lowering automobile insurance costs. We are disappointed in the DOT standards, to say the least.

Accordingly, Mr. Chairman, we see no alternative but to support legislation such as this which will in effect provide DOT a mandate to issue standards providing for improved motor vehicle design and production. In addition, of course, it will give the motoring public access to readily available information regarding the comparative safety and susceptibility to damage of the various motor vehicles.

Perhaps the key to this measure, at least as far as the insurance aspect is concerned, is the provision requiring that such information be provided to insurers for use in determining premium rates. Several insurers have already announced significant premium reductions for motor vehicles equipped with bumpers capable of withstanding low-speed crashes. We are confident that all of

our companies will ultimately make similar moves if such features become a normal part of all motor vehicles. Then, and only then, Mr. Chairman, can we expect a meaningful reduction in personal injuries and deaths resulting from auto crashes, and a comparable reduction in automobile insurance costs.

I pledge the full support and cooperation of our Association toward enactment of such legislation by the Congress. In the meantime, until more meaningful regulations are forthcoming from the Department of Transportation, we will continue to press for stringent motor vehicle design and production standards at the state level.

#### CONCLUSION

In conclusion, Mr. Chairman, I repeat that almost everyone agrees that improvement in automobile insurance is needed. Agents, insurance companies, state regulators, state and federal legislators—none are completely satisfied with automobile insurance as we know it today. But above all, the American motoring public is not completely satisfied. And after all, that is whom automobile insurance is designed to serve.

Until concerted action is taken by all of us, the public will not be properly served. *Now* is the time to get off dead center and start moving forward. We respectfully urge you therefore to give every possible consideration to the approaches we have proposed to you today.

Thank you, Mr. Chairman, for allowing us to share with you our thoughts and suggestions on the very important legislation now before you.

#### EXHIBIT "A"

##### THE ROLE OF THE INDEPENDENT AGENT IN THE MARKETING OF AUTOMOBILE INSURANCE

Reliable estimates indicate that there are more than 150,000 local independent insurance agents in the United States—one of the nation's largest groups of small businessmen. They are in a unique position to understand and serve the problems of their clients and their communities. Each represents a number of insurance companies, often both stock and mutual, which gives them the freedom to "tailor make" an insurance program based on the actual needs presented. Because they are not the employees of any particular company, they are in a position to arbitrate claims and adjustments to the advantage of their clients.

The evidence is irrefutable that people want professional service in the insurance field, and are willing to pay for it. A 1966 study conducted by Opinion Research Corporation for the Insurance Information Institute presented findings of a study among 2,003 men and women, 18 years of age and over, living in private households in the continental United States. One of the questions asked was, "If you were desirous of securing liability or collision insurance on a car, what would you consider the most important thing to look for?" The answers were interesting: only 38 percent said "price," the cost of the insurance. But the vast majority named those functions directly related to the independent agent: (a) selection of a good company; (b) comprehensive coverage; (c) prompt claim settlement; (d) protection from cancellation; and (e) the reputation of the agent himself.

However, the role of the independent agent in the marketing process of insurance is frequently misunderstood or unknown. Here then are just some of the important functions he performs. He:

*Presents the Need for Coverage.* The independent agent interprets the clients' needs and determines the proper coverage to fit these needs.

*Explains the Coverage.* Few people understand insurance. The independent agent constantly educates his clients and the public about the need for insurance and the terms, conditions, and coverages of the policies he is providing. The education of his client can well be an important responsibility of the agent.

*Risk Management.* While this concept more often applies to larger business and commercial property risks, it has a real applicability to automobile insurance. Risk management involves identification of the hazards faced, evaluating them in terms of those to be insured and those to be assumed by the client, and reviewing the hazards for the purpose of reducing or eliminating their potential to ultimately cause loss. Every time the independent agent discusses coverages with the insured, he is practicing risk management. This applies when he is insuring an automobile and selecting the proper coverages for the circumstances. (For example, recommending that collision coverage be discontinued when the

value of the auto has reduced sufficiently for the insured to assume the relatively small remaining risk.)

**Market Selection.** Having determined the insurance requirements of the client, the independent agent selects the appropriate coverage from the several companies he represents. The independent agent, being subservient to no one, is free to place the insurance needed by the client in a variety of companies. Thus, he can purchase just the right coverage for the circumstances his client has presented.

**Preparation of Policies and Endorsements.** The independent agent generally prepares the policy that he sells, or checks the accuracy of the policies prepared by the company. To do this he must employ policy raters—knowledgeable persons who can underwrite, classify and rate the risks presented to them. Also, every change made during the policy period must be processed. People move, buy new vehicles, revise coverage, add coverage for youngsters coming of driving age. All of these, processed by endorsements to the original contract, must be rated, prepared and delivered to the client.

**Reviewing and Updating Coverage.** The independent agent keeps his client's coverage current and up-to-date. He increases coverage to protect higher values, improves the limits of liability to better protect against loss, recommends the addition of new and pertinent coverages as they become available, and adjusts the policies and the coverages to reflect the changing needs of the client. Thus, the agent is responsive to the policyholder's particular needs.

**Advice and Counsel at the Time of Loss.** An agent's assistance is most important at the time of loss. The policyholder is often confused and needs help and guidance. The agent fills out the required loss and police reports, arranges for repair of the client's vehicle, advises the client as to what he should do in preparing his claim, calls the other party to get information not obtained by the client, and performs numerous additional services to assist his client through this trying experience. Moreover, claims of up to \$500 are sometimes processed by the agent himself. Finally, the independent agent helps his client to receive a fair and equitable settlement.

## EXHIBIT "B"

### MOTORISTS' INSURANCE—PROTECTION PLAN

A comprehensive package of legislative proposals designed to be enacted by the states, aimed at providing speedy, automatic basic injury compensation for all auto accident victims, and providing for the greatest possible protection for the nation's motorists by implementing stringent driver and highway safety measures and improving the legal system.

#### SYNOPSIS

##### I.—Highway Safety

This section calls for more stringent laws aimed at promoting highway safety. These include: loss of license and fines for driving under the influence of alcohol or drugs; permanent loss of license for habitual offenders; severe penalties for pedestrians involved in auto accidents while under the influence of alcohol or drugs; uniform driver licensing standards, including periodic physical and mental exams and testing of drivers; mandatory use of safety belts and motorcycle helmets, with penalties for nonuse and nonrecovery for injuries incurred as a result of nonuse; establishment of an effective system to identify habitual offenders; mandatory driver education; adequate police to patrol highways and apprehend violators; implied consent laws; and periodic vehicle inspection.

##### II.—The Legal System

This section calls for reforms of the legal system as it applies to auto insurance claims. These include: more judges and mandatory arbitration for all claims under \$3,000; 25% limitation on contingent fees with the right of appeal; all contingent fees approved in writing by the client and filed with the court; strict control of the division of attorneys' fees; itemized statement of fees submitted to court and client by attorney; modification of Collateral Source Rule to allow other benefits received to be admissible evidence, including remarriage; eliminate contributory negligence as an absolute bar to recovery and substitute

the Wisconsin Law; adoption of the Arkansas tortfeasor law; eliminate *Ad Damnum*; stiffer penalties for fraudulent claims and those who contribute to them; and adoption of various other practices and procedures to make the legal effort more efficient.

### III.—*The Reparations System*

This section provides for changes in the present system for compensating auto accident victims. Every auto liability policy shall include the following minimum benefits payable immediately regardless of fault: medical and hospital expenses coverage—\$2,000 aggregate limit and optionable deductible up to \$250; disability coverage—85% of gross income after 30 days, for 52 weeks, with a maximum of \$500 per month or \$6,000 total; uninsured motorist coverage—minimum \$10,000 per person and \$20,000 per accident; accidental death benefits—minimum \$5,000 if death results directly from the accident. Persons covered should include: named insured; members of the insured's family; guest passengers; and pedestrians. Coverage may exclude persons who contribute to their own injury or death through various unlawful means, and those entitled to Workmen's Compensation and similar statutory benefits. The insurer has the right of subrogation through mandatory inter-company arbitration. The insured has the right of rejection. The amount paid under uninsured motorist coverage may be reduced by the amount of benefits paid under other coverages. Insurers offering these automatic benefits may provide for subrogation and setoffs of amounts paid under such provisions against claims brought under the liability section of the policy. Broader coverages should be adopted as follows: up to 50% additional damages when medical and hospital expenses amount to \$500 or less; up to 100% additional damages when medical and hospital expenses exceed \$500; and higher standards allowed in cases of death and more serious injuries. Insurers should adopt immediate advance payment procedures, with credit allowed on subsequent recoveries by claimants and such payments not to be construed as an admission of liability. Loss of income damages recoverable should be defined so that juries can consider income tax savings when setting damage awards.

### IV.—*Rates and Policy Cancellations*

This section calls for enactment of competitive rating laws, and for the following restrictions on auto policy cancellations: cancellation only for nonpayment of premium or the suspension or revocation of the driver's license or motor vehicle registration; specific notice required of the insurer's intention to cancel or non-renew; and the reasons for cancellation provided to the insured upon request.

Adopted by the board of directors of the National Association of Mutual Insurance Agents, March 14, 1971.

## MOTORISTS' INSURANCE—PROTECTION PLAN

### I.—*Highway Safety*

1. Mandatory license revocation and severe fines for those convicted of operating a motor vehicle while under the influence of alcohol or narcotic drugs.

2. Permanent revocation of driving privileges of those motorists found guilty of habitual moving traffic law violations.

3. Severe penalties for pedestrians involved in motor vehicle accidents while under the influence of alcohol or drugs.

4. Uniform licensing standards for all drivers, coupled with a requirement for periodic physical and mental examinations and testing of drivers.

5. Mandatory use of motor vehicle safety equipment, including safety belts and motorcycle safety helmets, with penalties for nonuse and provisions calling for nonrecovery for injuries incurred which could have been prevented through use of such safety equipment.

6. Establishment of an improved system to identify those repeatedly involved in automobile accidents so that those found guilty of improper driving practices may be effectively dealt with.

7. Mandatory and meaningful driver education.

8. Establishment and maintenance of adequate police forces to patrol highways and apprehend violators.

9. Implied consent laws.

10. Periodic vehicle inspection.

## II.—*The Legal System*

### 1. Relieve court congestion and delay by :

(a) Providing a sufficient number of judges to keep abreast of the increase in judicial work occasioned by population, and (b) employing a mandatory small claims arbitration system for all lawsuits which involve claims under \$3,000.

### 2. Regulation of the contingent fee system by providing that :

(a) The amount of such a fee should be strictly regulated by appropriate local court rule or legislation (i.e. a 25% limitation on contingent fees, with the right of appeal to the court for approval of a larger fee); (b) every retainer on a contingent basis should be in writing in a fixed format and should be signed by the client; (c) a retainer statement should be filed with the appropriate judicial authority by a retained attorney within a fixed number of days from the date of the written contingent fee retainer; (d) there should be strict control of the division of fees between attorneys, based only upon work performed, and (e) upon completion of the claim or suit an attorney should file an itemized closing statement with the proper judicial authority and a copy thereof should be delivered to the client.

3. Modification of the Collateral Source Rule so that evidence of the nature and extent of all benefits and services received or to be received by the claimant as a result of the alleged injuries and damages sustained be admissible. Evidence of the remarriage of a surviving spouse should be likewise admissible in an action for wrongful death.

4. Eliminate contributory negligence as an absolute bar to recovery in an action for damages and provide instead that a claimant may recover if his negligence was not as great as the defendant's. The claimant's recovery should be reduced in accordance with the comparative degrees of fault by each party (Wisconsin SA 895.045). The following special verdict procedure should be established: Following a reasonable question and answer period, the jury should determine what percentages of total negligence was attributable to each party and the total amount of damages sustained by the plaintiff, thereby allowing the Court to reduce the total damages by those percentages (Wisconsin). Provide for contribution by joint tortfeasors to the plaintiff in proportion to the negligence attributable to each and provide certain safeguards and protections should any tortfeasor's contribution exceed his proportionate share or should one tortfeasor pursue a claim against another (Arkansas SA 34-1001 ff).

5. Eliminate *Ad Damnum*: That any pleading demanding relief in the form of unliquidated damages may only make a prayer for general relief and state that the amount claimed is within the minimum and maximum jurisdictional limits of the court.

6. Impose stiffer penalties upon those who intentionally make false or fraudulent claims for personal injury or property damage, upon those who intentionally assist in making of such claims and upon those who intentionally withhold information necessary to prompt, fair settlement of claims.

7. Provide for a more efficient use of the legal effort by adopting, in those jurisdictions which do not now have them or whose present rules are not as workable, those practices and procedures which limit the right to voluntary dismissals or nonsuits; the right to a split trial on issues of liability and damages; modification of appeal bond rules; summary judgment; mental and physical examinations of litigants; demands to admit the genuineness of documents or relevant facts; and offers of settlement, judgment and damages.

## III.—*The Reparations System*

1. Every automobile liability policy covering any non-fleet private passenger vehicle shall include the following minimum benefits payable immediately regardless of fault:

(a) Medical and hospital expense coverage up to a \$2,000 aggregate limit and subject to an option deductible (applicable only to the named insured and resident family members) of up to \$250; (b) disability coverage of 85% of gross income lost during a period commencing 30 days after the accident and continuing for 52 weeks, subject to a maximum of \$500 per month or a total of \$6,000; (c) uninsured motorist coverage of at least \$10,000 per person and \$20,000 per accident, and (4) accidental death benefits of at least \$5,000 when the death occurs as a direct result of the accident.

2. Persons covered should include the named insured, members of the insured's family residing in the same household, guest passengers and pedestrians. The

coverage may exclude persons who have injured themselves intentionally, were injured while intoxicated or under the influence of narcotic drugs, were operating the motor vehicle without a license or after suspension or revocation of license, were operating a motor vehicle in any race or speed contest, and were seeking to elude lawful apprehension or arrest by a law enforcement official; and any persons entitled to Workmen's Compensation and similar statutory benefits because of their injuries.

3. After the claimant has been paid his automatic benefits, his insurer should seek reimbursement from the party at fault (if any) or his insurance company. The issue of liability and reimbursement as between admitted insurance companies should be decided by mandatory inter-company arbitration, thereby reducing expenses and the burden on the courts.

4. The named insured should have the right to reject the automatic coverages (outlined in III, 1) as they apply to himself and members of his family residing in his household.

5. The amount an insurer is obligated to pay any insured under the uninsured motorist coverage may be reduced by the amounts of benefits paid to the same insured or his personal representatives under the medical and hospital benefits, the income disability benefits and the accidental death benefits.

6. Insurers affording the automatic benefits (III, 1) may provide for subrogation and for setoffs of amounts paid under such provisions against claims brought under the liability section of the policy.

7. Insurers should be permitted—in fact, encouraged—to offer broader coverages than the minimum benefits outlined herein.

8. The following standard for determining damages for pain, suffering and inconvenience should be adopted for all motor vehicle accident cases:

(a) Up to 50% additional damages when medical and hospital expenses amount to \$500 or less; (b) up to 100% additional damages when medical and hospital expenses exceed \$500 and (c) In cases of death, permanent disfigurement, loss of limb, permanent loss of a bodily function and other exceptional circumstances, a court or jury may exceed these standards.

9. Insurers should adopt procedures to provide immediate advance payment in every meritorious case of all out-of-pocket expenses of the claimant as they accrue and provide immediate settlement of property damage liability claims separately from bodily injury liability claims arising out of the same accident, where final settlement of the latter is delayed pending medical treatment or other causes beyond the insurance company's control. Insurers making advance payments and settlements should be allowed to take a credit against any subsequent judgment recovered by the claimant or settlement made with him. Such payments and settlements should not be construed as an admission of liability in any subsequent judicial proceedings.

10. Damages recoverable for loss of income in liability cases should be defined so that juries can take income tax savings into account when they are called upon to set damage awards.

#### *IV.—Rates and Policy Cancellations*

1. Competitive rating laws should be enacted to assure the public of the lowest possible price, best service, latest innovations in product and an available market. Rates would be effective when put into use, but they should be submitted to the state insurance commissioner for his information. In addition, the commissioner should approve reasonable rules and statistical plans adapted to each of the rating systems used and therefore used by insurers in recording and reporting loss and expense experience.

2. The following restrictions on the right of insurance companies to cancel automobile liability policies and combination policies affording liability and physical damage insurance covering private passenger automobiles owned by individuals or families should be adopted:

(a) After a reasonable underwriting period, the policy may be cancelled by the company during its term only for nonpayment of premium or the suspension or revocation of the driver's license or motor vehicle registration of either the named insured or any other operator residing in the household of the named insured or who customarily operates the automobile; (b) specific notice requirements should be established with respect to the insurer's intention to cancel or non-renew the policy, and (c) the reasons for policy cancellation should be provided to the insured upon request.

## EXHIBIT "C"

[Article from Mutual Review, February 1971]

## THE FEDERAL REGULATORS: OLD LIBERALISM VS. NEW CONSERVATISM

(By Louis M. Kohlmeier, Jr.)

There are many currents and counter-currents running in the country nowadays on issues such as consumerism, student unrest, law-and-order, and the rights of minorities. Political party labels are not always useful in detecting how the currents are running on particular issues. A conservative Republican may very well be in favor of new federal action to curb local crime and may be opposed to federal programs to regulate business. A liberal Democrat may be against deep federal involvement in the crime problem and for regulation of business.

But, even taking the seeming contradictions and complications into consideration, it seems to me that four main currents of public and political opinion can be identified. I would term them an old and a new liberalism and an old and new conservatism.

The old liberalism is a heritage from the days of the New Deal and certainly it represented the political mainstream through most of the post-World War II years. The old liberals have been in Washington for years and they still embrace New Deal-type solutions to contemporary problems, feeling the problems can be solved with federal power and federal money. The old liberals are found mainly in the Senate, but there are some in the House.

The old conservatives tend to deny that problems exist. But when they are pressed they tend to go along with New Deal-type solutions, perhaps because they also have been in Washington for a long time and are of the same generation as the old liberals. They also are to be found mainly in the Senate.

The new liberals see all the problems others see and, in addition, are constantly busy observing problems heretofore unseen. They, like the old liberals, insist that the federal government alone can solve the nation's problems. But, unlike the old liberals, they have no faith in the old New Deal-type of solutions and, rejecting these, they seem hard put to offer federal solutions of their own. There are some new liberals in the House, but they are found mainly in universities and working for foundations.

## NEW CONSERVATISM

Lastly, the new conservatives also see the problems of contemporary America, though not in as great an abundance as the new liberals. They reject not only New Deal-type solutions, but they also doubt that the federal government alone can solve the problems. There are numbers of this breed in the executive branch of government and some in the House. But they too are found in universities and foundations.

If these distinctions among four political attitudes are valid, then it seems to me that the elections last fall were unusually significant. My conclusion is that the mainstream of political sentiment in this country is moving away from the old liberalism that dominated much of the postwar period and is moving toward a new conservatism.

I draw this conclusion in part from the defeats of Senators Tydings and Goodell, and of Senator Gore of Tennessee. All three certainly were liberals and I would call them practitioners of the old liberalism, although I agree the label is debatable as it applies to Senator Goodell. All three of those races were of national significance because the Nixon Administration made them so, and I would classify President Nixon as a new conservative.

But I do not conclude that the country is moving toward a new conservatism only because of those three Senate races. It is perhaps even more significant that many normally liberal candidates moved to the right during the campaign, particularly on the law-and-order issue, in the hope of winning on election day.

I am sure I don't know whether the President is correct in claiming that he now has an ideological majority in the Senate.

But it seems plain that the new Congress as a whole will be more conservative than it has been in some years. The executive branch already is in conservative hands. And I think it is accurate to say that the third branch, the Supreme Court, is being moved by that strange process of judicial and political osmosis away from liberalism and toward conservatism.

## FEDERAL REGULATION

How then will the larger political context affect the specific issues involved in federal regulation of private industry, present and future?

Any answer to that question must begin with the observation that the federal regulatory apparatus, as it has been constructed over nearly a century and now exists, is today defended by almost no one except the old liberals who, not incidentally; helped to build the essentially New Deal structure of the independent regulatory agencies.

Criticism of the agencies isn't new. But I believe it never before has been as loud and it never before has been directed at the fundamental question of the ineffectiveness of these agencies as tools of federal law enforcement.

The criticism is coming from the new conservatives and the new liberals, and consequently it sometimes makes strange bedfellows.

On the conservative side, the American Bar Association has told President Nixon that the Federal Trade Commission should be abolished if it cannot be improved. Senators Tower of Texas and Baker of Tennessee, both Republicans, have asked Congress to study whether the Interstate Commerce Commission should be abolished. Senator Mansfield of Montana, the Democratic majority leader, already has decided the ICC should be abolished and has said so on the Senate floor.

Among the new liberals, Ralph Nader has been probably the most outspoken critic of the regulatory agencies.

It also is worth noting that the theorists of the movement known as the New Left, in their criticisms of a whole range of American institutions, public and private, often have singled out the federal regulatory agencies. For instance, one of these theorists is Charles Reich, the Yale professor who recently published a new book titled *The Greening of America*. The book, which is gaining great popularity among young people, singles out the regulatory agencies as prime examples of what's wrong with America.

I am not sure I would go as far as Professor Reich. But I of course share the view that federal regulation has not served the interests of consumers and, beyond that, it is my belief that regulation demonstrably also has not served the interests of industry or government.

## REGULATORY FAILURES

I could catalog the criticisms, but some of the failings of the agencies are obvious. The Federal Power Commission, for example, for many years has been regulating the production and transportation of natural gas and now some of the nation's largest cities apparently face a shortage of gas for winter heating.

The Federal Communications Commission nearly 20 years ago adopted a national master plan for television broadcasting which has never been fulfilled in terms of its projection of operating TV stations.

The Atomic Energy Commission has fallen far short of the goals Congress envisioned for peaceful uses of atomic energy.

The list of regulatory failures is a long one.

Some of the critics of regulation say the agencies have failed principally because the regulators are dull individuals who are captives of the industries they regulate.

That is part of the truth, but the whole truth is far more complex.

At the risk of oversimplification, it seems to me that the failures of federal regulation stem from three basic considerations.

The first is that, while federal regulation always begins modestly and usually is superimposed on state regulation, it never stops growing once begun. The basic reason is not simply bureaucratic empire building. The reason is that it is impossible to regulate or change one set of industrial practices without affecting others and thus others must be brought into the regulatory sphere. Further, it is impossible to regulate one group of competitors without affecting others, or indeed to regulate one industry without affecting related industries. It is for these basic reasons, I think, that federal regulation inevitably has become far more complex and difficult an undertaking than was envisioned by the New Dealers or, before them, the Populists.

The second consideration flows from the first. When Congress has decided to regulate an industry which hitherto was not regulated by the federal government, it has been prone to create a new independent agency rather than utilize an

existing agency. This congressional habit stems in part from a recognition that any bureaucracy tends over time to become static and unimaginative. But it also stems from the constitutional notion that federal power is less dangerous if divided than if concentrated.

And the third consideration is that each agency in time becomes the promoter as well as the regulator of its industry.

This result does not necessarily stem from the capture of the regulators by the regulated. It stems from the fact that federal regulation of industrial competition on a national scale, over the long haul, cannot forever pursue the consumer interest in low prices and economic security without also taking into account industry's need for an adequate return on investment and for new capital. If these needs are ignored for long, regulation cannot assure an adequate supply of goods and services in the future.

Applying these three sets of principles, what has been the result?

#### FEDERAL FIASCO

The result is many federal agencies (by some counts, more than 100 of them), each independent of the others and all effectively independent of the elected authority of the executive and legislative branches and thus free of meaningful coordination. Each of these agencies exercises an extraordinary power within its jurisdiction, writing rules with the force of law. With these rule-making powers and an array of other powers that aren't always uniform, the regulators proceed upon the delicate task of economic regulation.

To illustrate the difficulties, let me trace quickly the development of federal regulation of transportation, which has affected the insurance industry. I also single out transportation because this is the oldest area of federal regulation and its climax is the Penn-Central bankruptcy proceedings, which are the grandest fiasco yet wrought by the regulators.

This bit of history began in 1887 when Congress created the Interstate Commerce Commission for the single purpose of keeping railroad rates down. Subsequently a number of railroads went into bankruptcy and the government operated the railroads during World War I. Those experiences led Congress in 1920 to extend the ICC's regulatory authority to rail rate cuts and to mergers. Most of that package of controls was extended to the trucking industry in 1935 and to domestic water transportation in 1940.

Thus the ICC regulates competition among three kinds of carriers in domestic surface transportation, and attempts to allocate business among them.

That might not have been too difficult if the surface common carriers had a transportation monopoly. But Congress in 1938 created the Civil Aeronautics Board to regulate and promote air transportation, and gave the CAB but not the ICC subsidy authority.

In 1956, Congress entrusted to still another arm of government, the Bureau of Public Roads, the task of supervising state construction of the Federal Interstate Highway System.

The results are that the nation has a highly cyclical airline industry which defies the laws of supply and demand by raising seat prices every time it increases seat capacity. We have, to my way of thinking, a highway system so magnificent that it has encouraged the production and purchase of so many private automobiles and trucks that now our attention is drawn to the problems of highway accidents and air pollution. Moreover, the highways themselves are becoming a social issue.

We also have with us today the old ICC, which helplessly watched so much transportation business take to the highways and airways that it could figure out no better way to save the services of the bankrupt New Haven Railroad than to allow the Pennsylvania and New York Central Railroads to merge on condition that they take in the New Haven. And now the Penn-Central has gone down, even before it could pay for the New Haven properties.

#### WHAT WILL BE DONE?

Quite obviously then, all the criticism of federal regulation is warranted. But what, if anything, will be done?

The first indication of what will be done may well come very shortly when the Senate Commerce Committee decides what to do with Senator Hart's auto insurance bills. Senators Hart and Magnuson, the committee chairman, are old liberals and the Hart proposals essentially are cut out of old New Deal cloth.

The Nixon Administration apparently will counter with its own proposals to preserve state regulation of the auto insurance industry. So we will have a reasonably clear cut confrontation between the old liberalism in the Senate and the new conservatism in the White House.

If Mr. Nixon wins, he will indeed have evidence of an ideological majority in the Senate.

But it would be an easy victory compared with the task of dismantling the federal regulatory apparatus which has been created over nearly a century.

There are two realistic approaches to the dismantling process. One is for the federal government to return to the states some of its regulatory authority, and at the same time to share federal revenues with the states. The other is to place a greater reliance for consumer protection on industrial competition. Neither approach is easy, but some progress toward dismantling the existing federal apparatus seems likely in the years ahead. After all, it was President Kennedy, certainly a new liberal, who first proposed a partial dismantling of the Interstate Commerce Commission.

But it also is fair to predict that a century of history will not be totally reversed. Federal involvement in private industry is in some respects so deep that they may be no alternative to still deeper involvement. Nationalization of some railroad properties, for instance, may be the only way left to preserve essential rail services.

Beyond that, the federal government will not withdraw from its assumed role as overseer of the total national industrial economy. Not even Mr. Nixon has repudiated the federal responsibility for full employment without inflation. He argues with the new liberals over means, not ends.

## STATE INSURANCE DEPARTMENT STATISTICAL DATA, YEAR ENDING DEC. 31, 1969, COMPILED BY THE INSURANCE INDUSTRY COMMITTEE OF OHIO

States:	Companies	Premium volume all companies, 1969	Premium and franchise taxes certified, 1969	Fees collected, 1969	Total taxes and fees	Funds spent for operation of department	Personnel	
							Total (including examiners)	Examiners
Alabama	938	\$758,696,961	\$14,901,281	\$730,870	\$15,632,151	\$593,263	51	12
Alaska	535	94,260,111	2,561,761	171,114	2,732,875	1,156,449	10	0
Arizona	1,175	615,262,094	9,364,192	596,036	9,960,227	1,328,951	41	0
Arkansas	963	434,535,445	7,969,534	401,250	8,370,784	3,399,701	42	9
California	963	6,801,322,000	126,142,594	4,197,151	130,339,745	3,744,018	285	44
Colorado	998	648,246,995	12,702,257	427,058	12,624,315	544,623	54	18
Connecticut	631	1,023,710,014	24,731,899	650,557	25,382,456	625,046	55	25
Delaware	705	181,011,953	4,333,684	161,686	4,495,370	114,800	14	1
District of Columbia	781	237,032,700	4,740,654	169,448	4,910,102	390,000	24	9
Florida	973	2,013,029,477	27,994,836	3,661,699	31,646,335	2,813,213	130	0
Georgia	942	1,662,620,074	21,419,205	888,962	22,308,167	553,471	57	1
Hawaii	450	706,465,024	6,271,157	113,472	6,384,629	111,929	12	0
Idaho	829	178,701,696	4,583,584	247,928	4,831,512	202,588	21	0
Illinois	1,353	4,102,636,892	48,171,679	5,540,153	53,711,832	2,497,696	221	59
Indiana	1,206	1,725,000,000	23,962,459	458,590	24,421,049	330,465	57	19
Iowa	909	950,405,139	15,688,210	562,149	16,250,359	593,832	50	22
Kansas	848	698,119,875	10,417,143	469,833	10,886,976	1,690,556	81	9
Kentucky	874	725,217,332	12,380,272	308,720	12,688,992	1,524,038	69	8
Louisiana	1,091	1,058,267,765	18,119,297	250,731	18,370,028	535,885	42	9
Maine	676	261,271,984	4,216,709	295,161	4,511,870	254,017	21	2
Maryland	801	1,134,033,209	18,681,370	622,716	19,304,086	968,115	94	13
Massachusetts	576	1,775,000,000	37,774,181	1,414,917	39,189,098	2,851,955	366	189
Michigan	925	3,293,137,280	44,114,479	3,303,331	47,417,810	1,516,326	117	25
Minnesota	1,020	1,151,528,463	23,686,955	630,196	24,317,151	594,005	55	19
Mississippi	1,048	482,022,812	11,579,717	465,345	12,045,063	1,156,901	21	0
Missouri	952	1,439,238,190	23,899,278	901,468	24,899,778	1,686,507	122	30
Montana	771	1,177,000,000	4,578,134	353,566	4,931,700	118,855	12	1
Nebraska	818	636,277,000	7,442,000	212,388	7,650,388	405,765	49	14
Nevada	844	136,597,738	2,942,456	558,548	3,195,004	1,205,052	19	0
New Hampshire	615	175,000,000	2,904,805	324,041	3,128,846	1,212,719	34	8
New Jersey	788	2,639,281,914	34,690,168	1,585,192	36,275,360	1,319,896	193	38

New Mexico.....	889	245,291,468	5,302,272	367,429	5,689,701	1,402,404	28	0
New York.....	725	8,637,729,717	110,231,465	8,534,364	118,765,829	8,744,948	744	407
North Carolina.....	710	1,962,963,645	29,054,752	1,053,652	30,109,904	1,037,687	82	18
North Dakota.....	704	1,185,742,963	2,955,443	1,211,686	3,168,139	1,158,693	16	3
Ohio.....	1,107	3,385,186,012	55,168,111	1,731,759	56,899,870	1,718,913	91	26
Oklahoma.....	1,013	700,000,000	17,038,045	(1)	19,996,130	1,358,570	43	16
Oregon.....	1,816	810,437,189	17,038,045	511,213	11,549,288	337,660	35	65
Pennsylvania.....	1,556	3,752,281,386	58,541,136	1,913,510	62,520,570	2,627,085	266	7
Rhode Island.....	685	620,681,716	12,973,093	185,341	13,767,394	153,619	17	10
South Carolina.....	771	1,777,488,697	12,712,070	185,341	21,806,076	173,374	12	8
South Dakota.....	685	1,197,743,596	20,535,551	889,409	21,806,076	143,374	12	8
Tennessee.....	1,846	3,283,783,801	58,541,136	1,913,510	62,520,570	2,627,085	266	7
Texas.....	1,846	3,283,783,801	58,541,136	1,913,510	62,520,570	2,627,085	266	7
Utah.....	579	1,207,113,772	2,106,996	185,341	21,806,076	143,374	12	8
Virginia.....	970	1,157,708,763	27,796,996	185,341	21,806,076	143,374	12	8
Washington.....	970	1,157,708,763	27,796,996	185,341	21,806,076	143,374	12	8
West Virginia.....	768	1,010,470,142	17,053,458	444,367	21,806,076	143,374	12	8
Wisconsin.....	967	1,710,000,000	10,953,443	223,813	10,483,356	1,387,576	65	0
Wyoming.....	721	1,423,953,290	18,676,204	185,341	19,572,000	548,743	62	25
Total.....		1,080,958,679	51,427,090	1,142,465,101	50,248,617	213,415	16	4

## Territories:

Canal Zone.....	53	5,893,932	88,471	530	88,001	(1)	(1)	(1)
Guam.....	49	8,378,854	335,158	5,007	340,165	35,452	80	0
Puerto Rico.....	260	181,088,026	3,169,739	125,825	3,287,564	431,516	20	0
Canada and Provinces: <sup>1</sup>								
Dominion of Canada.....	439	3,458,604,217	(1)	1,440,553	(1)	1,632,459	110	34
New Brunswick.....	256	79,116,695	1,233,264	72,309	1,305,605	143,071	4	0
Nova Scotia.....	221	83,430,965	1,772,142	26,537	1,798,679	18,357	3	0
Ontario.....	561	1,499,507,015	(1)	(1)	(1)	(1)	(1)	(1)
Quebec.....	736	1,177,308,799	24,905,599	630,643	25,536,242	590,852	42	16
Prince Edward Island.....	154	9,463,197	213,117	59,023	25,536,242	9,821	2	0
Saskatchewan.....	284	107,731,709	2,266,159	178,383	2,444,542	150,809	6	2

<sup>1</sup> Does not include examiners' salaries and expenses.<sup>2</sup> Includes examiners' salaries only.<sup>3</sup> Includes examiners' salaries and expenses—domestic only.<sup>4</sup> Estimated.<sup>5</sup> Excludes advance payment 1970 privilege tax—\$19.4 million.<sup>1</sup> Excludes advance payment of premium tax—\$7.6 million.<sup>2</sup> Information unavailable.<sup>3</sup> Information unavailable.<sup>4</sup> Information unavailable for Virgin Islands and Provinces of Alberta, British Columbia, Manitoba, Newfoundland.

*Funds spent for the operation of insurance departments, 1969*

1. New York.....	\$8, 744, 948
2. Texas.....	4, 897, 188
3. California.....	3, 744, 018
4. Massachusetts.....	2, 851, 955
5. Florida.....	2, 813, 213
6. Pennsylvania.....	2, 627, 085
7. Illinois.....	2, 497, 696
8. Michigan.....	1, 516, 326
9. Washington.....	1, 388, 212
10. New Jersey.....	1, 319, 896
11. North Carolina.....	1, 037, 697
12. Ohio.....	978, 913
13. Maryland.....	968, 115
14. South Carolina.....	875, 637
15. Wisconsin.....	846, 743
16. Virginia.....	829, 933
17. Kansas.....	690, 556
18. Missouri.....	686, 507
19. Connecticut.....	625, 046
20. Iowa.....	593, 832
21. Minnesota.....	584, 005
22. Alabama.....	583, 263
23. Georgia.....	553, 471
24. Colorado.....	544, 823
25. Tennessee.....	543, 827
26. Louisiana.....	535, 885
27. Kentucky.....	524, 038
28. Nebraska.....	452, 765
29. New Mexico.....	402, 404
30. Arkansas.....	399, 701
31. Oregon.....	391, 660
32. District of Columbia.....	390, 000
33. West Virginia.....	387, 256
34. Oklahoma.....	358, 570
35. Indiana.....	330, 465
36. Arizona.....	328, 951
37. Maine.....	254, 017
38. Wyoming.....	213, 415
39. New Hampshire.....	212, 719
40. Nevada.....	205, 052
41. Idaho.....	202, 568
42. Rhode Island.....	163, 618
43. North Dakota.....	158, 693
44. Mississippi.....	156, 901
45. Alaska.....	156, 449
46. Utah.....	127, 900
47. South Dakota.....	123, 194
48. Montana.....	118, 855
49. Delaware.....	114, 800
50. Hawaii.....	111, 929
51. Vermont.....	83, 907

*Total revenue collected, taxes and fees, 1969*

1. California.....	\$130, 339, 745
2. New York.....	118, 765, 829
3. Pennsylvania.....	61, 454, 646
4. Texas.....	60, 507, 270
5. Ohio.....	56, 899, 870
6. Illinois.....	53, 711, 832
7. Michigan.....	47, 417, 810
8. Massachusetts.....	39, 189, 098
9. New Jersey.....	36, 275, 360
10. Florida.....	31, 646, 335
11. North Carolina.....	30, 109, 904
12. Virginia.....	28, 075, 795
13. Connecticut.....	25, 382, 456
14. Missouri.....	24, 899, 278
15. Indiana.....	24, 421, 049
16. Minnesota.....	24, 317, 151
17. Georgia.....	22, 308, 187
18. Tennessee.....	21, 806, 070
19. Oklahoma.....	19, 996, 130
20. Wisconsin.....	19, 572, 000
21. Maryland.....	19, 304, 086
22. Louisiana.....	18, 370, 028
23. Washington.....	17, 493, 825
24. Iowa.....	16, 250, 359
25. Alabama.....	15, 632, 151
26. South Carolina.....	13, 787, 434
27. Kentucky.....	12, 668, 992
28. Colorado.....	12, 624, 315
29. Mississippi.....	12, 045, 063
30. Oregon.....	11, 549, 288
31. Kansas.....	10, 886, 976
32. West Virginia.....	10, 482, 256
33. Arizona.....	9, 962, 227
34. Arkansas.....	8, 370, 784
35. Nebraska.....	7, 960, 388
36. Hawaii.....	6, 384, 629
37. New Mexico.....	5, 669, 701
38. Rhode Island.....	5, 620, 570
39. Utah.....	5, 147, 107
40. Montana.....	4, 931, 700
41. District of Columbia.....	4, 910, 102
42. Idaho.....	4, 831, 700
43. Maine.....	4, 511, 870
44. Delaware.....	4, 495, 370
45. New Hampshire.....	4, 228, 846
46. South Dakota.....	3, 861, 286
47. Nevada.....	3, 195, 004
48. North Dakota.....	3, 168, 139
49. Alaska.....	2, 732, 875
50. Vermont.....	2, 291, 898
51. Wyoming.....	2, 000, 505

Senator HART. We have just heard the point of view voiced by the National Association of Mutual Insurance Agents, and now we will hear from the National Association of Insurance Agents.

Speaking for them is the chairman of the casualty committee, Mr. Harold Eustis of Mississippi, and Donald Perin, director of research of the association, will accompany him.

I apologize to you for keeping you so long here.

**STATEMENT OF HAROLD EUSTIS, CHAIRMAN OF CASUALTY COMMITTEE, NATIONAL ASSOCIATION OF INSURANCE AGENTS, GREENVILLE, MISS.; ACCOMPANIED BY DONALD PERIN, DIRECTOR OF RESEARCH**

Mr. EUSTIS. Thank you, sir.

Mr. Chairman and members of the committee:

My name is Harold Eustis. I am an independent insurance agent from Greenville, Miss. I am privileged to appear here today as chairman of the casualty committee of the National Association of Insurance Agents. This organization has members in the 50 States and the District of Columbia and is the largest insurance producer organization in the United States.

With me is Donald Perin of New York, who is our director of research.

My comments are reflective of the independent agents' deep interest in and concern over the problems which have arisen in various sections of the country in the area of automobile accident reparations. We agents appreciate this opportunity to present to you our views about the proposed changes in the handling of these reparations.

I hope you won't think me presumptuous if I compliment your committee at the outset of my testimony for your interest and your straightforward approach to finding a workable solution to the very perplexing problem of properly compensating the automobile accident victim. Your desire to hear the views and comments of all interested parties on this major issue is commendable.

We agents believe we are uniquely qualified to testify on this issue because we are the ones in immediate personal contact with insurance buyers. Because of our daily contact with the insuring public we are the first ones to receive any complaints about the present system as related to price, claims, payments and availability.

We must agree that some remedial action is indeed warranted to correct the recognizable imperfections that have developed in our present system. We remain firmly convinced, however, that basically the fault concept best serves the public, although it does appear to have some shortcomings.

Our deep concern for improvements in the present automobile accident reparations system has taken the form of a careful study by the casualty committee of this national association. This committee's recommendations were unanimously adopted in January by our National Board of State Directors. This action provides an accurate public reading of the feelings and attitudes presently existent among agent leaders and memberships in each of our 50 State associations.

The position of the National Association of Insurance Agents, which we now find closely parallels the position taken by most other insur-

ance organizations, as well as members of the academic fraternity, the administration, and some Members of Congress, is as follows:

(1) That the National Association of Insurance Agents supports a system which provides for immediate first-party payments for economic loss due to bodily injuries caused by or resulting from automobile accidents.

(2) That the National Association of Insurance Agents reaffirms its position that the tort liability principle should be retained.

(3) That the National Association of Insurance Agents maintains the firm conviction that every effort should be made to correct the deficiencies of the present system, on a State-by-State basis, before the basic principles of the system are subjected to major modification.

(4) That the National Association of Insurance Agents recognizes the public need to develop some objective standards for measuring general damages.

It is apparent that these four basic recommendations are broad in scope, but they are purposely so in order to leave the ultimately and proper decisions of specific actions to individual States where variations in conditions will dictate varying solutions.

From these four basic points you will recognize that the many thousands of independent insurance agents comprising our association's membership—although they do recognize some imperfections in the present fault concept—firmly believe that such conditions do not call for a complete scrapping of the tort liability concept. Individual wrongdoers should continue to be held basically responsible for their negligence, even though some form of first-party reparations may now be in the public interest.

We are particularly interested in the fact that the reparations provisions in S. 945 retain the principle of tort liability and fit within the broad guidelines that our association has adopted.

It is our belief that the widespread general publicity and comments on studies of so-called no-fault insurance over the past several years may be misleading the public into believing that they would receive first-dollar reimbursement for automobile property damage, as well as bodily injury loss, without regard to fault.

There is also an apparent widespread belief that there would be an automatic reduction in the cost of insurance were such a no-fault system adopted. We believe this is a false, or at least speculative, assumption.

At a recent seminar on no-fault auto insurance sponsored by the University of Minnesota it was demonstrated that even a relatively modest change in bodily injury claim frequency could change a reduction in premium to an increase.

In simplified terms, the total cost of automobile accidents is the product of claim frequency times claim severity. Even the proponents of a complete no-fault system acknowledge that claim frequency will increase under such a system—but they don't know how much. They anticipate that the severity will go down enough to offset the effect of the increased frequency but neither the actuaries nor their supporters know for sure, and both admit that the cost estimates developed depend upon a host of assumptions.

In any discussion of the no-fault provisions of S. 945, and most other no-fault plans that have been advanced, we are dealing with

the bodily injury portion of the automobile insurance package, or an average of about 35 percent of the total premium under the present system. This means that even a 25-percent reduction in the bodily injury portion of the premium produces only an 8¾-percent reduction in the cost of the total automobile insurance package. There is that much differential and more in the present market between individual companies, and even within the same company on different policy forms.

We recognize that S. 976 deals with the problem of damagability of automobiles, but we also recognize that even the passage of such a bill would take some time to get within the insurance premiums.

One of the basic differences between what we propose and what is provided in S. 945 is the State versus Federal approach to solving the automobile accident reparations problems.

We believe that the problems in this area are significantly different from State to State, and sometimes even within a given State, particularly as they relate to the effectiveness of local law enforcement, one of the key factors in automobile accident control—and directly related to automobile insurance rates and availability.

As a part of the National Association of Insurance Agents' efforts to reduce automobile accidents we have embarked upon a major national consumer crusade to improve local law enforcement. This program is aimed at every major city manager, city or county council and every State legislature. It is important to note that no law or regulation—whether Federal or State—is any better than its administration at the local level.

Mr. Chairman, if I may, I would like to offer in the record a kit here which explains in detail this consumer information program.

Senator HART. It will be received.<sup>1</sup>

Mr. EUSTIS. Another reason we favor solving the automobile accident reparations problems on a State-by-State basis is the difference which exists, from State to State, in (1) medical cost levels, (2) average wages and (3) general economic conditions, all of which will have a direct effect upon the level of the thresholds of first-party, no-fault auto accident payments which should be spelled out in the statutes. Above such thresholds we agree that individuals should be allowed to make the choice of either depending upon the principle of tort liability or buying high level first-party coverage to protect themselves against catastrophic harm.

I would like to make one observation about litigation. While it is true that the law of negligence, under which many of our automobile accident cases are settled today, has produced much litigation, bringing with it court congestion and delay in some jurisdictions, a no-fault system will not remove litigation. As any agent can testify, there are plenty of lawsuits under first-party insurance policies, brought either under contract law to straighten out differences of opinion and interpretation of the policy provisions or under equity to determine the actual extent of loss.

Part of the Department of Transportation's automobile insurance and compensation study dealt with the matter of mass merchandising of property and liability insurance, and a companion bill to S. 945 deals with group selling. There appear to be some misconceptions about how the agents feel generally about the group selling of automobile insurance and homeowners. Most agents do not oppose mass

<sup>1</sup> See p. 553.

merchandising plans, per se, but they are concerned primarily about two aspects of such plans: First, the lessening of proper service to the policyholder; and, second, the hidden expense of administering such plans by the employer and by the insurance companies. Agents feel that the public will be shortchanged by mass merchandising plans unless such expenses are carefully segregated and identified.

In the areas of both no-fault auto accident reparations under a Federal program, and mass merchandising plans written on a wide-open, unrestrained basis, the agents fear similar consequences. If they don't work, the problems produced could be horrendous—particularly as they relate to coverage and price—and both situations could be very difficult to reverse.

Mr. Chairman, we respectfully request careful consideration of our viewpoint by the committee and express our appreciation for this opportunity. We will gladly endeavor to answer any questions you or the other members may have.

Senator HART. Thank you.

Mr. Perin, do you have any comments?

Mr. PERIN. No, sir; I have no separate statement.

Senator HART. I noticed where you make the point that S. 945 deals with bodily injury, and you make the computation allowing even for a 25-percent reduction in the total automobile insurance package cost that it would produce only an 8¾-percent reduction in cost.

But putting that another way, we are talking about a billion and a quarter dollars. Assuming that the information we have is correct, that the total automobile insurance package of premiums runs about \$14 billion a year, 8¾ would be about \$1¼ billion. That is a pretty substantial saving.

Mr. EUSTIS. Overall, it is. We are not opposed to cost saving to the individual buyer. It doesn't look like all that much, though. That is the point I wanted to make.

Senator HART. Senator Cook?

Senator COOK. Thank you.

Mr. Eustis, I think the only point that you bring out is the same point that Mr. McGowen brings out, that to provide a means by which basic protection is immediately available and that if that protection is not elected by the insured, that he can work it basically on the same basis as we work workmen's compensation.

Do you agree with this type of theory?

Mr. EUSTIS. We don't have a specific plan. We have some broad guidelines.

Senator COOK. Aren't we talking about much the same thing under your guidelines 1, 2, 3, and 4?

You say, "the National Association of Insurance Agents reaffirms its position that the tort liability principle should be retained."

Aren't we talking about a combination of both?

Mr. EUSTIS. That is correct.

Senator COOK. Is it your opinion that by working on a combination of both a savings will ultimately be perfected because the biggest majority of your cases will be settled under the no-fault provision, and adequate protection is provided to the insured who wishes to take his case on a tort liability basis?

Mr. EUSTIS. Senator, I wouldn't want to make any speculation about any exact amount of cost saving. What you are going to do under this

sort of plan is to pay people who have never been paid before. You have got to get the money from some place. You can get it out of circumscribing the general damage requirement or eliminating general damage recovery and hopefully reducing litigation expense and legal fees, and get that portion out of the premium.

Senator Cook. I hope you don't mean people who have never been paid before. If you are saying this, then you are saying a tremendous amount of people who have insurance coverage have never been paid when legally or logically they should have been paid.

Mr. EUSTIS. I am saying, Senator, that under your present tort system a person who doesn't have first-party coverage in a State that has a contributory negligence statute, then under the tort system he would not recover and it would not be paid under auto bodily injury system.

Senator Cook. We don't have too many States with contributory negligence, do we?

Mr. EUSTIS. We have a comparatively broad contribution negligence statute in my State. Most everybody that gets hurt down there gets paid.

Senator Cook. I think we are coming close to what I envision, because I think we face the situation where as long as we retrain the ability to pursue tort liability and then have an overall no-fault, we may find that it will be totally destructive to some people who sue above a no-fault facility and conceivably many people in the country may feel that they can totally rely on a no-fault program and then find themselves wiped out because the no-fault has been utilized by a plaintiff and then all of a sudden he finds himself sued and liable for tremendous judgment.

So, I think what we are talking about is a combination of both. I think that is what you are talking about.

Mr. EUSTIS. Yes, sir.

Senator Cook. Thank you, Mr. Chairman.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. Mr. Eustis, I understand that these positions that you have set forth are general positions and you do not have a plan by which to test the specifics of the provisions.

Mr. EUSTIS. That is correct. We did that purposely.

Mr. SUTCLIFFE. I would like, however, to ask you several questions about whether or not you feel the principles would suggest one course of action or another, because on the basis of the principles it is difficult to tell.

Would you abrogate the tort action between policyholder to the extent thier economic losses are compensated on a first-party basis?

Mr. EUSTIS. These are very broad things, if you want a personal opinion of mine or the position as adopted by the National Association. We purposely left these broad to allow experimentation within the individual States. Had we come out with a so-called guide plan, we feel we would have discouraged that experimentation. These are very broad and they do not and never were intended to go into specifics such as you bring up.

Mr. SUTCLIFFE. I understand that position and, therefore, will not go into any other specific questions about the propositions. I understand there is flexibility to approach the matter in the best way that a particular jurisdiction, be it State or national, sees fit.

Mr. EUSTIS. Generally speaking, any plan which does not com-

pletely abrogate the tort system would come within these guidelines provided it is done on a State-by-State basis.

Mr. SUTCLIFFE. Senator Hart has mentioned potential cost savings of \$11¼ billion if you improve the efficiency of the bodily injury liability system by 25 percent. On the basis of testimony with regard to the Puerto Rican plan, that does not seem to be an overall generous figure at all.

Would you or your organization support efforts to include property damage liability within the ambit of first-party coverages to effect a similar savings that could be passed on to those people presently not receiving benefits in the combination system?

Mr. EUSTIS. Not at this time, Mr. Sutcliffe, the reason being, No. 1, we think we ought to try the bodily injury portion first. You are dealing with a smaller claim frequency. There are many, many cases where there is no question about who is at fault, and people can get awfully upset about a \$50 skinned fender. We do not believe at this time it is proper to go that far.

Mr. SUTCLIFFE. Would you be in support of a proposal to approach the property damage problem from another angle; namely, the angle of requiring manufacturers to build cars whose property loss susceptibility is much reduced from existing vehicles?

Mr. EUSTIS. Anything that can be done to reduce damagability to automobiles would help the situation and we would support it.

Mr. SUTCLIFFE. I understand on the basis of the figures you have provided, 65 percent of the premium dollar now goes for property damage coverage; is that correct?

Mr. EUSTIS. Well, in the elements of the property damage coverage, property damage, auto physical damage, and collision.

Mr. SUTCLIFFE. So by improving the accident of loss picture in this area, we could effect substantial savings in your opinion?

Mr. EUSTIS. Yes; that combined with improved traffic control and improved law enforcement.

Mr. SUTCLIFFE. One point related to the need to consider the local factors such as medical payment levels and so forth that you enumerate in your statement. When insurance rates are set at the present time, are those factors plugged into the data base for setting the rates, or do rating boards utilize a national data base to determine rates for particular jurisdictions?

Mr. EUSTIS. They actually use both. I have a copy of a rate filing here with me. They use State claim costs and national claim costs. If the number of State claims is creditable, then they will use 100 percent. Otherwise, they will adjust it to national.

Mr. SUTCLIFFE. So there is at the present time in the rate structure some averaging?

Mr. EUSTIS. It could be. It would depend on the individual State, the size of the State or the territory that is involved.

Mr. SUTCLIFFE. Senator Hart, I have no further questions.

I thank the witness.

Senator HART. Gentlemen, thank you.

Again our apology for holding you so long.

This concludes the scheduled questioning for today.

We adjourn to resume at 10 a.m. tomorrow in this room.

(Whereupon, at 1:30 p.m., the hearing was recessed, to reconvene at 10 a.m., Wednesday, May 5, 1971.)

(The following was referred to on p. 468:)

## REPORT OF THE ARBITRATION COMMISSIONER

FRANK ZAL, Arbitration Commissioner

The miracle of Compulsory Arbitration, or trial by lawyer panels, a division of the County Court of Philadelphia, is about to complete its first decade of service in the administration of justice. It came into existence on February 17, 1958. Shortly thereafter, on May 19, 1958, the following headline appeared in a Philadelphia newspaper: "Clean Up of Civil Backlog Seen Within 18 Months." The article then proceeded to quote Judge Gerald F. Flood, who stated that the Common Pleas Courts can wipe out their backlog of 7,700 civil cases within the next 12 to 18 months. Nine years later, on June 18, 1967, the following headline appeared in another Philadelphia newspaper: "The Maelstrom in Our Courts; 6 Years Until Trial." This article was written by the Honorable Herbert S. Levin, a Judge of the Common Pleas Courts of Philadelphia, and in it he described the details of Court backlog and, in part, stated as follows:

"The trial reservoir of untried civil cases in Philadelphia's Common Pleas Courts contains over 16,300 cases. Some 90 percent of them fall into the category of trespass actions, a prime example of which is a personal injury suit growing out of an automobile accident.

"These cases frequently take more than six years to come to trial. During this period, there is no compensation for the plaintiff, who may be totally disabled and unable to work.

"The long delay is an unmitigated evil. Claimants have the following complaints about it: Many are forced onto relief rolls; many are unable to obtain proper medical treatment; out of economic necessity, many settle out of court for much less than they are due.

"On the other hand, defendants, like insurance companies and utilities, protest that they must set up huge reserve funds; that claimants add new injury complaints in the interim; and that a continuing check must be made to insure availability of clients and witnesses."

On September 13, 1967 the backlog was reported to be 19,219 cases.

Obviously, the 1958 prophetic statement did not materialize in all the jurisdictional areas. This, however, was not for lack of challenge or lack of effort on the part of the Philadelphia Bar Association or the Judiciary. The challenge was very clear and it cannot be said that the Philadelphia Bar "fell asleep at the switch" or failed to understand the challenge that was undeniably there. As a matter of fact, during the past ten years, many attempts were made to eliminate Court backlogs. Among the suggestions proffered were the following: Change the rules of the Courts, increase the number of Judges, better Court administration, the Diggin's Plan, certificate of readiness, the Keeton-O'Connell plan, etc. Of course, any plan which has the promise of reducing the awesome backlog of cases is deserving of the closest attention. There can be no denial that all these plans did receive close scrutiny. As a matter of fact, formal efforts to find a better way to dispose of trespass claims goes back for a quarter of a century. Yet, in spite of all these attempts, thousands and thousands of men, women and children have been waiting years for justice.

The Philadelphia Bar has often been first with advancement of legal services and purposes. Its members always recognized the needs of the community and have never avoided their obligations as community leaders and officers of the Court. We have recognized the fact that Court backlogs deprive the judicial processes of the esteem it should have and diminishes respect for the law.

The Philadelphia lawyers have every right to be proud of their heritage. No profession can boast of a more glorious and significant one. The history of the Philadelphia Bar is a record of self-sacrifice, determination, foresight and courage of its countless members. Someone once said that men of "mark" make poor runners because they are inclined to look back. Of course, all of us are also familiar with the story of Lot's wife, who turned into a pillar of salt, because she looked back. However, the Philadelphia Bar has not made the mistake of resting on its laurels, nor expected its past achievements to sustain

its profession's public stature today. It has not been "polishing brass" while the ship was sinking. Instead, it has indicated its concern over the need for greater respect for the law and has shown a willingness and ability to act. Thus, during the past ten years, it has actually done something about expediting justice for some of the motorists and some of the 1,750,000 injured and dead each year on American highways.

Judge Flood's prophecy did materialize in the area of civil cases not exceeding \$2,000.00. The Philadelphia Bar Association's answer to the challenge of Court congestion has been Compulsory Arbitration. This has resulted, both in tangible and intangible benefits. The tangible results of the progressive action, by means of trial by lawyer panels, with the cooperation of the Philadelphia Bar are readily measured by the number of cases disposed of during the past decade, over 62,000 cases, and the average waiting period is now reduced to three months. The intangible results, namely, a greater confidence in our legal processes, resulting from the more timely administration of justice, although less easily measured, are no less real and of far greater importance.

And so, during the past ten years, this outstanding program of public service by members of the Philadelphia Bar, unmatched by any other Bar Association, has brought honor upon the City of Philadelphia and, of course to the Philadelphia Bar Association, because of the outstanding devotion to the public interest and to the welfare of our citizens, demonstrated by members of the Philadelphia Bar.

Curiously, this experiment to clean up congested courts did not originate in metropolitan Philadelphia—where it is so spectacularly successful—but in a rural section of western Pennsylvania. Butler County after World War II had only one Judge, a backlog of 500 civil suits, and the Common Pleas Court was three or four years behind in its docket. A pair of enterprising attorneys decided it was time to blast things loose. J. Campbell Brandon and Carmen V. Marinaro found their

opportunity in a long-forgotten act of 1836 that provided that either party in a civil suit could *voluntarily* submit to arbitration. The attorneys went a step further to urge putting teeth into the old law and making arbitration *compulsory*. They drew up a proposal for automatic arbitration of all civil cases involving \$500. or less and laid it before Butler County Commissioners. Brandon and Marinaro showed them how it would eliminate costly jury trials and relieve an overburdened Court. Judge William B. Purvis heartily approved the reform and the new rules of the Court that had been drafted to put compulsory arbitration into effect. The first trial was an automobile damage suit that was disposed of in one hour. Within two years, arbitration had wiped out Butler County's 500 case backlog.

"There were murmurs that Judge Purvis may have stretched the law a bit by introducing compulsory arbitration through court order" recalls lawyer Brandon. "But it proved to be a fast, inexpensive form of justice; a kind of 'poor man's court', and succeeded far beyond our expectations." As far as Philadelphia was concerned the beginning of compulsory arbitration was introduced by Section 3 of the 1957 act, which was signed by Governor George M. Leader on June 20, 1957. This was an amendment to the act of 1836, June 16, P. L. 715.

Obviously, a serious constitutional question was presented by this act, which brought about trial by lawyers' panels. In the case of *Application of Harvey A. Smith*, 381 Pa. 223, 112 A. 2d 625 (March 23, 1955), 350 U. S. 858 (1955), the Supreme Court of Pennsylvania sustained the Act. The constitutional attack had been that the act violates the due process guarantee of the Fourteenth Amendment and the right to jury trial conferred by Article I, section 6, of the Pennsylvania Constitution which provides that, "Trial by jury shall be as heretofore, and the right thereof remain inviolate." The majority held that a reasonable condition could be imposed on a litigant's right to a regular court trial, and that the requirement that the county be reimbursed for arbitrators' fees, even though the payment

to the county was not thereafter recoverable as costs, was not per se an unreasonable condition.

Thus, with the constitution question out of the way, Compulsory Arbitration, which had its beginning in Philadelphia on February 17, 1958, met with immediate success. By the end of the first year, 11,841 cases were removed from the Philadelphia court backlog and numerous favorable comments began to appear in the Philadelphia press. We particularly point with pride to an editorial which appeared in one of the newspapers on February 19, 1959: "Those who have despaired of justice lagging in hopeless backlogs, and those who have called for more and more courts as the only way out, have something to ponder in this one year record. Surely the technique can be applied to many other areas of the pettifogging litigation which claims the city's tribunals. The Municipal Court will be happy to show how it is done." At the end of the first five years, 33,982 cases had been removed from the court backlog. On February 13, 1963, Mayor James H. J. Tate presented an official tribute to Compulsory Arbitration. On February 18, 1963 ceremonies commemorating the fifth anniversary were held in Room 650, City Hall and laudatory remarks were made by members of the judiciary, the Bar Association and City Council. On January 27, 1964, there appeared an editorial in one of the leading Philadelphia newspapers, under the caption "Unhappiness Report", detailed current problems in the courts and brought out the fact that "the optimistic side of the report is that the County Court is an outfit which goes to work whenever the chips are down. It has performed judicial wonders in cutting into the backlog of minor damage suits, for example." This, of course, was a reference to the method of trying cases by means of Compulsory Arbitration or Trial by Lawyer Panels.

Of course, we are not unmindful of the fact that some of our critics might say that this simplified procedure might serve to encourage the filing of new claims. This they say would be self-defeating. Yet, even if it were so, society is still better

served if all citizens, poor or rich, have ready recourse to prompt legal relief. However, as far as we can determine, compulsory arbitration procedure has not appreciably stimulated the filing of claims, but we are convinced that it has increased the settlement of claims before suit is ever instituted. Another possible criticism has been that the flexibility and informality of compulsory arbitration tends to break down the traditional safeguards built into the judicial process. However, in relation to the small claims nature of these cases, greater "justice" is apt to result from speedy disposition, than from meticulous attention to mechanics of the judicial process. However, we are not entirely convinced that there is any less attention to the safeguards in the trial of cases before lawyer panels than there is when a case is tried before a judge without a jury. What is significant, of course, is that no one can deny that litigation is not piling up mountains high, and justice is not delayed.

All this was made possible because Compulsory Arbitration, a division of the County Court, is a tribunal with the largest amount of judicial manpower in the world. The majority of our 2,500 panel members, who act as the "judges" and the 2,500 court room facilities are actually available to try cases all year long. At this time we can also say with pride that with more than 60,000 cases under our belt, we are more convinced than ever that, with exception of Compulsory Arbitration, there is no other single major cure for the congestion in our courts, particularly in matters relating to trespass action.

An unbiased survey at this time would show that it is almost the universal opinion among all litigants trying their cases in Compulsory Arbitration, that justice is administered with real judicial-like stature. It would also indicate that justice is being meted out with courtesy and with business-like efficiency. This, we are certain, will be corroborated by most of the lawyers, litigants, witnesses, newspaper men and others who have come before the 2,500 Philadelphia lawyers who have acted as panel members.

Our list of current panel members still includes many senior members of the Bar who are prosperous practitioners, with busy calendars, who are willing to answer the call of public service. We are also proud of the fact that many of our arbitrators, who have served during the years, are Federal, State or County legislators, the Lieutenant Governor of Pennsylvania, Chancellors of the Philadelphia Bar Association, the Attorney General of Pennsylvania, the City Solicitor of the City of Philadelphia, District Attorneys of the County of Philadelphia, and some are now Judges in the County, Common Pleas, Supreme and Federal Courts. The following members of the Judiciary were former members of panels: Hon. Joseph E. Gold, Hon. Clifford Scott Green, Hon. Stanley M. Greenberg, Hon. Theodore S. Gutowicz, Hon. A. Leon Higginbotham, Jr., Hon. D. Donald Jamieson, Hon. Gregory G. Lagakos, Hon. Herbert S. Levin, Hon. Alfred L. Luongo, Hon. John R. Meade, Hon. Frank J. Montemuro, Jr., Hon. Thomas D. McBride, Hon. James Thomas McDermott, Hon. Thomas M. Reed, Hon. Samuel H. Rosenberg, Hon. Theodore B. Smith, Jr., Hon. Edmund B. Spaeth, Jr., Hon. James L. Stern, Hon. Juanita Kidd Stout, Hon. Charles R. Weiner, Hon. Charles Wright, Hon. Robert N. C. Nix, Jr., and Hon. Vito F. Canuso.

Our panel members are a real cross-section of the Bar and so, of course, are also the attorneys for the litigants trying the cases before our panel members. Thus, there have been instances where counsel for the litigants were young lawyers and the arbitrators were "old time members of the Bar" and vice versa. On one occasion, the chairman of one of the panels was a "veteran" with one solid year behind him—the three "neophytes" who represented the litigants were William A. Gray, Esquire, Thomas D. McBride, Esquire and Edward H. Cushman, Esquire, who, at that time, had amassed one hundred forty-two years at the Bar. The procedure, of course, has also served as an excellent training program for lawyers. Of course, most litigants would be disturbed to know that a lawyer was "cutting his judicial teeth" as an arbitrator in a particular case. From the lawyer's

point of view, serving as an arbitrator provides invaluable experience. The advancement of knowledge in such an important profession ultimately benefits the community.

As already indicated, Compulsory Arbitration, or trial by lawyer panels, was a "smash hit" in Philadelphia right from the very beginning. In the very first year of its operation, Compulsory Arbitration was a factor in winning, for the Philadelphia Bar Association, the American Bar Association award of merit for 1958, for the outstanding program among Bar Associations in cities of more than 100,000 population. The same first year it also figured in the annual award of the Pennsylvania Bar Association. It was also one of the factors in the Philadelphia Bar Association's receiving the American Bar Association's 1967 award of merit for excellence. Throughout the past ten years, we have continued to receive laudatory attention throughout the world in various editorials, articles, law reviews, Court decisions, newspapers, radio and television, including foreign language media. Just to mention a few, we point to an article in the April 1960 issue of the Readers Digest (page 197); March, 1965 issue of the Law Society Gazette, British publication; Harvard Law Review, volume 74, page 3, January, 1961; University of Pennsylvania Law Review, volume 113, page 1117; May, 1960 Commercial Law Journal; March-April, 1960 Dicta; the Monthly Journal of the Denver Bar Association; the Colorado Bar Association and the University of Denver College of Law; the New York Times; the Philadelphia Legal Intelligencer; the New York Law Journal, January 10, 1967; February 1967 of Judicature; June, 1966 issue of the Verdict, publication of the Philadelphia Trial Lawyers Association, and 421 Pennsylvania Supreme Court Reporter 145.

Leading citizens in the community have also taken time out to write to us. Thus, on February 6, 1967, William A. Schnader, Esquire, wrote as follows: "Again I congratulate you on the results accomplished by the Compulsory Arbitration Division, and only hope that in any legislation intended to consolidate the Common Pleas and County Courts extreme care will be taken to

see that the work of your Division be not disturbed. If anything is done to modify your work it should be an increase in the jurisdictional amount which is subject to compulsory arbitration." The following letter from United States Senator Hugh Scott, on June 19, 1967: "The manner in which the Court has handled its task and the worldwide publicity given this system—gives one reason to be proud." A letter was also received from United States Senator Joseph S. Clark—June 12, 1967: "Certainly the precedent-setting success of the lawyer panels in Philadelphia deserves to be widely known and commended. The fact that approximately 60,000 cases have been disposed of by lawyer panels since 1958 speaks eloquently of the importance of your pioneering work. The County Court of Philadelphia and your Commission can be proud of your achievement, and so can all Pennsylvanians."

Compulsory Arbitration was also proud to participate in the Law Day exercises, which were held in Court Room 453, on Wednesday evening, April 27, 1966. On February 17, 1967, there was a special court room ceremony presided over by the Hon. Adrian Bonnelly, President Judge of the County Court, for the purpose of marking the beginning of the tenth year of Compulsory Arbitration.

The Arbitration Commissioner has also received quite a bit of attention during the past ten years. On April 10, 1959, a staff writer of the Evening Bulletin, in describing the progress and mechanics of compulsory arbitration, referred to the Arbitration Commissioner as the "dynamo" behind the system. The April 1965 edition of the Shingle, published by the Philadelphia Bar Association had a profile of the Arbitration Commissioner, Frank Zal, written by Sylvan M. Cohen, Esquire, and the front cover carried the Commissioner's picture with these words: "Acumen—imagination—generous disposition." On February 16, 1967, John C. Calpin, of the Evening Bulletin editorial staff, had a lengthy article on the editorial page again describing the mechanics of compulsory arbitration and featured a large

picture of the Arbitration Commissioner. The Commissioner was also the recipient of the 1967 Fidelity Award.

On a number of occasions, the Arbitration Commissioner has been invited and did address various groups who were interested in the problems of court backlog. These appearances were not limited to Philadelphia or Pennsylvania. On August 7, 1964, he was invited to address and did appear before the National Conference of Court Administration Officers in New York City at their tenth annual meeting. He also participated in two Bench and Bar conferences, namely, in 1962, at the fourth annual Bench and Bar conference in Atlantic City, New Jersey, at which time the panel consisted of Sylvan M. Cohen, Esquire, Wilfred R. Lorry, Esquire, Arbitration Commissioner Frank Zal and the Honorable Nochem S. Winnet, who was the moderator. He also appeared on a panel with the Honorable James L. Stern and Sylvan M. Cohen, Esquire, at the eighth annual Bench and Bar conference in Atlantic City, New Jersey, in 1965. The Arbitration Commissioner has also written numerous articles which have appeared in various publications and we particularly point with pride to the November 1961 issue of the American Bar Association, page 1101, and the editorial, page 1095; the August 1964 issue of Law Office Economics and Management, page 131; also April-May 1967 issue of Trial, page 52 and the June 21, 1965 issue of the Legal Intelligencer of the Monday Bar report of the Philadelphia Bar Association, which featured the following article, "Compulsory Arbitration funds sought to effect the reduction in waiting period." This article was subsequently published by the Bar Association as a reprint for general distribution.

During the years we have also developed an added feature which we call "instant" arbitration. Thus, since 1964, cases involving amounts exceeding \$2000., in which lawyers, while clients and witnesses were actually waiting in court rooms for trial, agreed among themselves that the cases were to be tried by means of Compulsory Arbitration and sometimes by the direction of the court were referred to "instant" trial. In

these instances at the direction of the court a panel of three lawyers was immediately mobilized by a telephone call by the arbitration commissioner and in a matter of minutes these cases were on trial and disposed of without delay. These cases were disposed of in the private office "court room" of the panel member who was designated as chairman. In the absence of compulsory arbitration, these cases would have had to await trial by a judge or judge and jury and probably would not have taken place the same day, and maybe not for months to come. However, because of this "instant" reference to compulsory arbitration, the court was not only able to expedite dispositions of 50 cases but, in addition, was able to give its immediate attention to other cases. These "instant" cases were serviced without any additional charge to the County of Philadelphia and our statistics indicate that the cost per case was only approximately \$62.00. Consider and *compare the waiting period and cost per case* to the litigants and to the City, if these cases had to be tried by a Judge or Judge and jury.

A review of appeals, indicated that out of approximately 63,000 cases processed from February 17, 1958 to December 31, 1967, 3,967 were appealed to the County Court. However, it is significant to note that out of all the cases appealed only a small percentage were actually tried. Most of them are settled after the appeal is taken and at some stages of the process, before the actual trial in Court. Of those actually tried in Court, the greatest percentage upheld the disposition made by the panels. We leave it to our readers' judgment to draw their own conclusion as to whether or not the number of appeals were a reflection on the record of the arbitrators. We would also like to point out that among the appealed cases there were quite a few that were taken by marginal insurance companies who are now in liquidation and it is quite evident at this time that they were only taken for the purpose of delay.

In the area of Court reviews, we have had a number of significant decisions during the past ten years. These cases are now part of our annual reports, the most significant one being

the handling of the problem of "record costs". This was disposed of in *Budde v. Sandler*, 204 Superior Court, page 36. To this previous list we should now like to add the case of *Coates v. Rodemoyer*, 41 D. and C. 2d, page 593 which brought out the distinction between an appeal bond and a recognizance in matters pertaining to appeals from awards in compulsory arbitration.

Another case is that of *Bacon American Corporation v. Henise Tire Service, Inc.*, 41 D. and C. 2d, page 562. Here the Court held that an appeal from an award, an amended answer containing a counterclaim, even though within the jurisdictional limits of compulsory arbitration, will be allowed to be heard during the appeal, in order to avoid multiplicity of actions.

Another interesting case is that of *Lanigan v. Lewis*, Superior Court of Pennsylvania, October Term, 1967, No. 138, which held that the practice in Philadelphia County and some other counties, of the Prothonotary entering an attorney's fee for the benefit of the attorney representing the winner of an award in arbitration in an arbitration proceeding, when the award is appealed, was unauthorized.

At present there is also pending an answer to the question whether or not when an appeal of arbitration is quashed because the costs in arbitration were not paid, does the loser have the right to request the return of money paid to the County in reimbursement for arbitrators' fees. This is now pending in the cases of *Art Casting Co. v. Vernon Cox and Co.* and *Cohen and Snyder*, County Court, September Term, 1962, No. 9779 D; and, *Vernon Cox and Co., Inc. vs. Art Casting Company*, Defendant, *Giftwares Company*, *Pier-Angeli Specialty Co.*, *Garnishes*, County Court, December Term, 1964, No. 2952 B. See also *Bucciarelli v. DiCicco*, 14 D. & C. 2d 61 (1958).

We also would like to call to the attention of the members of the bar the following three cases which likewise deal with the question of costs and the return of the arbitrators' fees to the County when an appeal is taken on behalf of a minor, or on

behalf of the City of Philadelphia: Sean Roberts, a minor, et al. vs. Walinski, Defendant and Jean J. Roberts, Additional Defendant, County Court, December Term, 1964, No. 3569 D; George Roberts, a minor, et al. vs. Walinski, Defendant and Jean J. Roberts, Additional Defendant, County Court, December Term, 1964, No. 3568 C; and Sylvia Zucker and Harry Zucker vs. City of Philadelphia, County Court, March Term, 1966, No. 18763-C.

In addition, we should like to pinpoint a few interesting cases which deal with the form of affidavit of no delay which has to be taken when a case is appealed from arbitration: *DeRica v. Derri*, 400 Pa. 473; 162 Atlantic 649 (1960); *Firmly Yerger vs. Griffith*, 1 Chester 200 (1878); and *Novotony vs. Danoro Borough*, 59 Pitt. 143 (1911).

We are also proud to point out that the rules of Compulsory Arbitration which were adopted December 20, 1957, have stood up firmly and with very few changes. There were amendments on February 6, 1958, June 20, 1958, May 25, 1962 and January 20, 1967. In the last two amendments Rule II B made a slight change in the grouping of the alphabetical list used in the appointment of arbitrators; and Rule III-H was also amended to delete the word "record" and to substitute instead the words "Transcriptions of the testimony." Our original forms have also been retained, with the exception that recently we prepared and had approved a new report and award form and a new trial order form. Significant changes in the rules of evidence so as to permit the introduction of certain evidence by affidavit, particularly with reference to repair and medical bills, have been approved on September 15, 1967.

And now a word about the cost of trial by lawyer panels. The first appropriation from City Council for arbitrator fees was at the rate of \$85.00 per case. Subsequently, beginning with 1961, at the suggestion of City Council, arbitrators were asked to reduce their fees by \$5.00 per case and since that time the allocation has been on the basis of \$70.00 per case. However,

the actual average cost per case is only \$62.00, and during the past ten years, the total allocation for arbitrators' fees has been \$2,502,011.00, or an average of \$250,000. per year. Considering that during these ten years we have processed approximately 62,000 cases, it is indeed a real bargain when you consider the millions of dollars saved by the City of Philadelphia by elimination of the expense of fees that would have been paid in salaries to various Court personnel, maintenance of Court room facilities, \$9.00 a day per juror, etc. Our statistics also show that in the past ten years, lawyers who have participated in trial by lawyer panels have each served a total of seventeen rounds, for an average total of fifty-one Reports and Awards, and have earned approximately \$122.00 per year. This certainly has not made them rich but, of course, participation in compulsory arbitration is a public service and is not a money making proposition.

It is also significant to note that in many instances, some of the hearings were drawn out, sometimes taking as much as a full day and, in some instances, more than a day, and yet there were a very few requests or petitions for additional compensation. During the past ten years there have been a total of 77 petitions for an allowance of \$4,290.00. On the side of the attorneys for the litigants, we wish to point out that during the past ten years it has only been necessary to refer 832 cases for sanctions, due to the fact that these cases, by reason of attorneys' requests of unreadiness had to be continued by two separate panels on two different occasions. This in itself is not a bad record.

Finally, a statistical word as to the human element involved. While the responsibilities of the Arbitration Commissioner have been many because of the numerous details involved in handling approximately 2,500 arbitrators, the work has also been most gratifying due to the wonderful cooperation exhibited by the Judiciary, the official family of the Bar Association and members of the entire Bar. We are particularly grateful to Hon. Hazel H. Brown who was the President Judge when the

details of the plan were formulated, and who gave unstintingly of her time and interest so that a staff and office facilities were quickly assembled. We are grateful to the Hon. Adrian Bonnelly, President Judge of the County Court, who celebrated his Diamond Jubilee in May of 1965. By reason of his long-standing national reputation, and because of his enthusiasm for the accomplishments of the miracle of Compulsory Arbitration whenever and wherever he was invited to address various gatherings throughout the breadth and width of this great U. S. A. he never missed an opportunity to herald the accomplishments of the Philadelphia Lawyer panels which have been a shining beacon in the mass of Court congestion and thus we attained additional stature.

The original rules of arbitration prepared by the first Court Committee on Compulsory Arbitration, consisting of Hon. Francis F. Burch, Hon. Felix Piekarski and Hon. Victor J. DiNubile, have held up very firmly. A great deal of credit should go to the Judges of the Municipal Court, who enthusiastically and with a great deal of devotion, worked long and many hours in order to promulgate the rules governing arbitration. Since 1966 we have been operating under the guidance of a County Court Judicial Committee consisting of Hon. James L. Stern, Chairman, Hon. Gregory G. Lagakos and Hon. Clifford Scott Green. Over the years we have also been directed by a Bar Association Committee consisting of a large committee of lawyers under the guidance of a Chairman. From 1958 to 1962, it was Sylvan M. Cohen, Esquire who, with his committee, did a magnificent job in guiding in the preparation of instructions to the Bar and in handling the task of answering numerous letters and inquiries during the first five years. Thereafter, the following leaders of the Bar were Chairman, namely, Raymond J. Broderick, Esquire (1963) who is now the Lieutenant Governor of Pennsylvania; William Bruno, Esquire (1964), Joseph N. Bongiovanni, Jr., Esquire (1965) and Joseph V. Restifo, Esquire (1966 to 1967).

During the latter years we have also had the services of William H. Brown, III, Esquire, as Vice Chairman, Leonard M.

Sagot, Esquire, as Secretary and Joseph N. Bongiovanni, Jr., Esquire, as liaison to the Board of Governors. We are grateful to acknowledge the fact that as a result of the effort of this Committee the status of Compulsory Arbitration has been enhanced to the extent where we have a monthly statistical report published regularly in the Legal Intelligencer, and since September 23, 1966, the findings of panel members are likewise published daily in the Legal Intelligencer on the same par with all of the dispositions in the Federal, State and County Courts. Of this we are proud.

We also wish to express our gratitude to the strong line of Chancellors who have been in office during the past ten years and whose leadership gave impetus, vitality and direction to our division: Walter Alessandroni, Jr., Esquire, Vincent P. McDevitt, Esquire, David Berger, Esquire, Theodore Voorhees, Esquire, Marvin Comisky, Esquire, Robert L. Trescher, Esquire and Arlin M. Adams, Esquire. To their yeomen, the hard working Committee members and Chairman, go our accolades. We are also grateful for the fact that the current Chancellor, Arlin M. Adams, has issued a plea asking that members of the Philadelphia Bar Association's Board of Governors who were not participating on panels should make every effort to join the lawyers participating in Compulsory Arbitration and we are happy to state that the response has been most gratifying. Chancellor Adams has also been in the forefront in spearheading the Bar Association's request that the legislature increase the jurisdiction of compulsory arbitration to \$3,500. It has also been called to our attention that currently Robert L. Felice, a third year law student at the Villanova Law School, in his seminar in judicial administration, is writing a thesis on the question: Should the jurisdictional amount be raised from \$2,500. to \$5,000.

We also wish to point out that arrangements are now being made by the Philadelphia Bar Association to present certificates of achievement in February, 1968 to all of those lawyers who will have participated as panel members during the first ten

years. Indications are that there will be a specially arranged ceremony. Attached hereto is a list of the approximately 1350 panel members who will be receiving certificates.

Finally, certainly any resume, legend or anthology of the first decade of compulsory arbitration would not be complete without expressing our thanks and debt of gratitude to the Mayor of Philadelphia, to the members of City Council, to the various City departments and the staff of the Legal Intelligencer, who have all given us their utmost cooperation. Last, but not least, the very office and staff of the Arbitration Division. Someone once said, although we have never met that individual, that the first hundred years are the hardest. However, without going into any research as to the reliability of that statement, we can certainly, from personal experience, attest to the fact that the first decade of Compulsory Arbitration was not exactly a bowl of cherries or a path of roses. On the other hand, just like when handling a rose bush, we must admit that while at times we have felt the sting of thorns, we have also enjoyed the sweet aroma of all the accolades. As a matter of fact, we are a great believer in the ideas expressed by Frank L. Stanton, who said as follows:

"This world that we're a-livin-in  
Is mighty hard to beat;  
You git a thorn with every rose,  
But ain't the roses sweet."

On the whole, however, the Bench and Bar have been kind and helpful to us. It has been a joy to work with wonderful people and for wonderful people.

Actually, of course, the story of Compulsory Arbitration for the past ten years is a story of pressure from "without" and "within". We began Compulsory Arbitration with 7,102 trial orders, a lack of staff and space. With the passing years, our space situation has not improved. As for staff, due to competing wage increases afforded outside of our office, some of our personnel has been changing, thus necessitating the retraining of

inexperienced staffers. The wealth of experience embodied in a trained employee is hard to replace. Our office space has not only been inadequate for our staff, but unsuitable as well for many of the lawyers who come in to see us daily.

However, we are very hopeful and still look forward to the time, maybe in the near future, when we will have adequate space and will be able to accommodate the many people coming into our office. But in spite of all these drawbacks, we have enjoyed good relations with all the members of the Bar and are happy to attest to the fact that during the past ten years we have, with some measure of success, answered thousands of questions proposed to us by lawyers, panelists and attorneys for litigants. At the same time, we are also very proud of the dexterity and efficiency of our staff who, over the years, have developed a very efficient filing system and it is so up-to-date that we are able to find the status of any case within a matter of seconds. Our staff has often been flattered by the remarks of lawyers who have told us on many occasions that our personnel has the memory of a computer and the sagacity of a Solomon.

And so, as we close the curtain on the first decade of Compulsory Arbitration, we do so with a great deal of pride and we do not look at the number of transactions and cases disposed of through our office as mere statistics, but rather in the terms of the affairs of human beings who, by reason of Compulsory Arbitration, have been spared the unjust experience of suffering a hardship usually caused by Court delays. And so, as we envision the happy faces of the thousands of litigants who are no longer waiting in line to obtain justice, we, in a sense, feel that we have been well rewarded.

**TABLE 1**  
**SUMMARY OF ARBITRATION CASES: 1958 TO 1967**

Action on cases referred	To Dec. 31 1963	To Dec. 31 1964	To Dec. 31, 1965	To Dec. 31, 1966	To Dec. 31, 1967
Cases referred to arbitration since 2-17-58.	40,275	46,125	52,575	59,225	66,025
Cases processed.....	36,872	41,992	48,045	56,227	64,568
Reports and awards filed (total).....	23,275	26,641	30,158	35,202	40,541
Settled and discontinued cases.....	10,311	11,480	12,789	14,345	15,831
Miscellaneous dispositions.....	2,173	2,491	2,888	3,314	3,749
Deferred cases.....	128	162	188	251	338
Continued cases.....	419	532	898	1,126	626
Cases held up at request of counsel...	398	574	1,003	1,461	2,234
Cases pending before panels.....	168	112	121	528	1,249
Unassigned cases.....	3,403	4,133	4,530	2,998	1,457

**TABLE 2**  
**SUITS BROUGHT<sup>1</sup> IN THE COUNTY COURT, NUMBER OF CASES REFERRED  
TO ARBITRATION, ORIGINAL ASSIGNMENT OF CASES, SUBSEQUENT  
REPLACEMENTS, REPORTS AND AWARDS, AND APPEALS FILED:  
1963 TO 1967**

	1963	1964	1965	1966	1967
County court suits brought.....	20,120	20,150	20,721	19,721	19,568
Trial orders filed in arbitration.....	6,293	5,860	6,450	6,650	6,800
Original assignments.....	3,681	3,369	3,617	3,391	6,213
Replacements.....	2,039	1,899	1,895	2,010	3,077
Reports and awards filed.....	3,812	3,366	3,617	5,044	5,339
Appeals.....	503	451	367	433	480

<sup>1</sup> Excluding bills debet sine breve and adoption proceedings.

TABLE 3

STATUS OF ARBITRATION CASES BY ORDER OF REFERRAL FROM  
1958 TO 1967

Number of cases processed progressively	Status of cases as of December 31, 1967								
	Total	Reports and awards	Settled— discon- tinued	Miscell. dispo- sitions	De- ferred	Con- tinued	Hold	Pend- ing	Not assigned
Total....	66,025	40,541	15,831	3,749	338	626	2,234	1,249	1,457
1-40,000....	40,000	26,074	11,247	2,420	83	14	149	13	....
40,001-45,000....	5,000	3,376	1,152	344	30	26	168	14	....
45,001-50,000....	5,000	3,330	1,051	313	49	33	211	14	....
50,001-55,000....	5,000	3,186	981	313	66	69	284	101	....
55,001-60,000....	5,000	2,960	864	202	59	237	537	150	1
60,001-61,000....	1,000	529	127	43	11	50	164	74	2
61,001-62,000....	1,000	487	123	31	11	59	163	126	....
62,001-63,000....	1,000	420	117	35	9	73	152	193	1
63,001-64,000....	1,000	211	103	30	12	49	170	421	4
64,001-65,000....	1,000	59	49	11	8	16	141	119	597
65,001-66,000....	1,000	9	17	7	....	1	115	24	827
66,001-66,025....	25	....	....	....	....	....	....	....	25

TABLE 4

## DATE OF ORIGINATION OF CASES REFERRED FOR ARBITRATION

Year	Month												
	Total	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1952 <sup>1</sup> 1953..	{ 491	19	29	51	41	34	58	35	41	54	38	38	53
1954..	610	29	38	52	53	48	49	58	65	56	62	58	42
1955..	932	62	73	45	70	64	82	70	85	71	128	109	73
1956..	2,729	140	166	126	235	247	258	285	257	248	300	236	231
1957..	4,234	247	322	322	429	292	313	380	301	516	349	344	419
1958..	5,148	323	391	501	429	399	509	414	382	457	499	465	379
1959..	6,506	458	430	585	402	403	521	404	528	473	411	498	1,333
1960*	5,840	....	....	1,452	....	....	1,487	....	....	1,155	....	....	1,246
1961..	5,786	....	....	1,475	....	....	1,562	....	....	1,315	....	....	1,434
1962..	6,117	....	....	1,576	....	....	1,706	....	....	1,234	....	....	1,541
1963..	6,239	....	....	1,659	....	....	1,877	....	....	1,240	....	....	1,463
1964..	6,150	....	....	1,520	....	....	1,819	....	....	1,429	....	....	1,382
1965..	6,326	....	....	1,742	....	....	1,902	....	....	1,331	....	....	1,351
1966..	5,880	....	....	1,567	....	....	1,746	....	....	1,261	....	....	1,306
1967..	3,349	....	....	1,370	....	....	1,181	....	....	283	340	156	19

\* County Court terms changed in 1960 to quarterly terms.

<sup>1</sup> Antecedent 1952 there were 188 cases: 1 each in 1932, 1936, 1938, 1942, 1943, 1945; 2 in 1946; 11 in 1947; 8 in 1948; 15 in 1949; 65 in 1950; 81 in 1951.

TABLE 5

## TOTAL AWARDS AND APPEALS BY AMOUNTS AND NUMBER OF ARBITRATORS

Amount of award	Reports and awards				Appeal cases			
	Total	Cases heard by:			Total	Originally heard by:		
		1 Arbitrator	2 Arbitrators	3 Arbitrators		1 Arbitrator	2 Arbitrators	3 Arbitrators
Total findings.....	*40,581	80	9,172	31,329	3,968	9	1,012	2,947
Findings for plaintiffs.....	23,094	42	5,477	17,575	3,200	9	829	2,362
Findings for defendants.....	10,361	20	2,235	8,106	753	....	179	574
Settled during arbitration hearings.....	7,015	18	1,444	5,553	....	....	....	....
Miscellaneous findings.....	111	....	16	95	15	....	4	11
Amount of awards for plaintiffs.....	23,094	42	5,477	17,575	3,209	18	829	2,362
\$ 1- 100.....	2,242	2	439	1,801	63	1	15	47
101- 200.....	4,127	2	881	3,244	148	1	30	117
201- 300.....	3,559	6	807	2,746	217	1	55	161
301- 400.....	2,628	4	808	1,816	277	....	68	209
401- 500.....	2,340	5	561	1,774	323	5	80	238
501- 600.....	1,514	1	326	1,187	272	....	68	204
601- 700.....	1,122	2	283	837	226	2	71	153
701- 800.....	1,203	2	297	904	238	2	66	170
801- 900.....	735	2	160	573	215	1	66	148
901-1,000.....	790	4	214	572	228	1	67	160
1,001-1,100.....	447	2	101	344	132	2	29	101
1,101-1,200.....	416	1	105	310	146	....	37	109
1,201-1,300.....	364	1	83	280	116	....	18	98
1,301-1,400.....	253	....	77	176	92	....	28	64
1,401-1,500.....	310	....	77	233	121	....	32	89
1,501-1,600.....	157	2	45	110	58	....	16	42
1,601-1,700.....	153	....	32	121	63	....	14	49
1,701-1,800.....	169	....	38	131	59	....	15	44
1,801-1,900.....	113	2	29	82	34	1	8	25
1,901-2,000.....	193	1	46	146	72	....	18	54
2,001 and over.....	259	3	68	188	109	1	28	80

\* The reason for the variation in the number of findings and/or Reports and Awards listed herein and in Table 3 is due to the fact that some trial orders require more than one Report and Award by reason of garnishment, retrial, etc.

TABLE 6

MONTHLY NUMBER OF SUITS BROUGHT, CASES REFERRED TO  
ARBITRATION, AND OTHER ACTIONS TAKEN: 1964 TO 1967

Month	Suits brought in County Court	Arbitra- tion trial orders filed	Original assign- ments	Replace- ments*	Reports and awards filed	Appeals filed
<b>1964.....</b>	<b>20,150</b>	<b>5,850</b>	<b>2,359</b>	<b>1,899</b>	<b>3,360</b>	<b>451</b>
January.....	1,668	525	333	77	89	12
February.....	1,563	475	385	140	144	12
March.....	1,719	575	315	171	331	16
April.....	1,679	575	660	184	313	48
May.....	1,706	450	639	322	470	60
June.....	1,712	470	630	321	605	68
July.....	1,775	405	240	316	531	80
August.....	1,700	425	60	115	291	40
September.....	1,689	475	90	124	241	36
October.....	1,670	500	....	59	188	44
November.....	1,519	450	5	36	103	20
December.....	1,640	525	2	24	60	16
<b>1965.....</b>	<b>20,721</b>	<b>6,450</b>	<b>3,517</b>	<b>1,895</b>	<b>3,517</b>	<b>367</b>
January.....	1,571	500	602	80	47	4
February.....	1,624	525	544	212	264	8
March.....	1,933	675	685	323	470	36
April.....	1,861	525	631	318	569	44
May.....	1,726	475	601	272	570	64
June.....	1,953	575	454	303	645	55
July.....	1,792	575	....	167	476	79
August.....	1,689	500	....	63	185	35
September.....	1,692	500	....	43	121	10
October.....	1,498	500	....	38	83	14
November.....	1,833	525	....	31	55	8
December.....	1,549	575	....	45	32	10
<b>1966.....</b>	<b>19,721</b>	<b>6,650</b>	<b>5,391</b>	<b>2,910</b>	<b>5,052</b>	<b>433</b>
January.....	1,478	515	1,251	214	90	3
February.....	1,525	460	855	387	475	9
March.....	1,910	600	1,008	508	910	55
April.....	1,600	625	800	378	778	61
May.....	1,637	600	120	263	648	75
June.....	1,759	540	135	146	352	50
July.....	1,611	510	135	89	198	39
August.....	1,774	550	150	72	117	7
September.....	1,709	525	600	195	151	15
October.....	1,613	575	600	284	462	16
November.....	1,548	550	192	255	495	48
December.....	1,557	600	45	119	376	56
<b>1967.....</b>	<b>19,568</b>	<b>6,800</b>	<b>6,213</b>	<b>3,677</b>	<b>5,344</b>	<b>480</b>
January.....	1,588	525	1,260	254	224	24
February.....	1,425	425	1,095	520	504	41
March.....	1,635	675	438	576	831	51
April.....	1,528	575	165	299	621	60
May.....	1,701	750	210	296	494	72
June.....	1,754	600	315	226	328	39
July.....	1,832	525	240	183	282	32
August.....	1,808	600	405	128	228	24
September.....	1,514	525	555	205	312	26
October.....	1,640	575	630	282	425	32
November.....	1,579	500	900	381	541	24
December.....	1,474	525	....	327	554	55

\* Note: See following table.

<sup>1</sup> The reason for the variation in the number of Reports and Awards listed herein and in tables 1 and 2, is due to the fact that some trial orders require more than one Report and Award by reason of garnishment, retrial, etc.

**TABLE 7****REASONS FOR REPLACEMENTS IN ARBITRATION CASES: 1963 TO 1967**

<b>Reason for replacements</b>	<b>1967</b>	<b>1966</b>	<b>1965</b>	<b>1964</b>	<b>1963</b>
<b>Total .....</b>	<b>3,677</b>	<b>2,910</b>	<b>1,895</b>	<b>1,899</b>	<b>2,089</b>
<b>Settled and discontinued .....</b>	<b>1,072</b>	<b>933</b>	<b>559</b>	<b>636</b>	<b>738</b>
<b>Stricken, transfer and no jurisdiction .....</b>	<b>217</b>	<b>203</b>	<b>130</b>	<b>148</b>	<b>142</b>
<b>Judgment, equity, bankruptcy and assessment of damages .....</b>	<b>86</b>	<b>49</b>	<b>25</b>	<b>22</b>	<b>31</b>
<b>Deferred .....</b>	<b>118</b>	<b>89</b>	<b>48</b>	<b>55</b>	<b>89</b>
<b>Disqualified .....</b>	<b>558</b>	<b>360</b>	<b>187</b>	<b>217</b>	<b>220</b>
<b>Continued .....</b>	<b>1,500</b>	<b>1,199</b>	<b>898</b>	<b>772</b>	<b>802</b>
<b>Consolidated .....</b>	<b>117</b>	<b>77</b>	<b>48</b>	<b>49</b>	<b>67</b>

The following members of the Philadelphia Bar Association received Certificates of Achievement for meritorious and distinctive service rendered for more than ten years as a member of Trial-By-Lawyer panels in the County Court of Philadelphia, Pennsylvania. The certificates have on them the Seal of the City of Philadelphia; The Philadelphia Bar Association; The County Court of Philadelphia; and were signed on behalf of County Court by Adrian Bonnelly, President Judge; James L. Stern, Chairman, Judiciary Committee for Compulsory Arbitration; Frank Zal, Arbitration Commissioner. They were also signed on behalf of the Philadelphia Bar Association by Lewis H. Van Dusen, Jr., Chancellor; Sidney Schulman, Chairman, Committee for Compulsory Arbitration and Leonard M. Sagot, Secretary, Compulsory Arbitration Committee.

Jacob L. Aaron  
Robert D. Abrahams  
David E. Abrahamsen  
Norman H. Abrahamson  
Herman Abrams  
Jacob B. Abrams  
Maurice Abrams  
Morton Abrams  
Benjamin Abramson  
Bernard I. Abramson  
Herman P. Abramson  
Samuel Abramson  
J. Stokes Adams, III  
William K. Adams  
William T. Adis  
Avram G. Adler  
William M. Adshead  
Joseph Alessandroni, Jr.  
Leonidas A. Allen  
Robert G. Allman  
Ben S. Altshuler  
Levy Anderson  
Harry E. Apeler  
Lewis K. Arinsberg  
G. Levering Arnhold  
Isaac Ash  
George Ashe  
Albert J. Bader  
Philip Bagdon  
Joseph Bak  
Joseph F. M. Baldi, II  
Henry W. Balka  
Jerome R. Balka  
Harry Norman Ball  
Warren M. Ballard  
Melvin Alan Bank  
Barton M. Banks  
Franklin G. Banks  
Morris Paul Baran  
Ethel S. Barenbaum  
Myron E. Barg  
Leonard Barkan  
Edwin B. Barnett  
Edward N. Barol  
Martin S. Barol  
Catherine R. Barone  
Albert A. Bartolomeo  
Charles Rasch  
Stanley Bashman  
Martin W. Bashoff  
I. Sydney Bass  
Abraham N. Bassman  
Franklin H. Bates  
Julius C. Baylinson

Max C. Baylinson  
Donald Bean  
Frank Bechtel, Jr.  
Perry S. Bechtle  
Henry H. Beck  
Ada E. Beckman  
M. Robert Beckman  
Isadore H. Bellis  
Alvin J. Bello  
Harry J. J. Bellwoar, Jr.  
Albert Benditt  
Bertram Bennett  
Milton M. Bennett  
Philip E. Berens  
Jerome N. Berenson  
David Berger  
Harold Berger  
Edward B. Bergman  
Gabriel Berk  
Abraham Berkowitz  
Malcolm W. Berkowitz  
Nathan Berlant  
John S. Bernheimer  
Ben Bernstein  
Caire B. Bernstein  
I. S. Bernstein  
Samson B. Bernstein  
Sidney Bernstein  
Yale B. Bernstein  
W. Thomas Berriman  
Norman S. Berson  
Victor R. Bieber  
Lawrence D. Biele  
Frank Bielitsky  
Matthew S. Biron  
Henry Bischoff  
Francis A. Biunno  
Sidney H. Black  
R. Jere Bloche  
Herman Bloom  
Lynwood F. Blount  
Stanley W. Bluestine  
Arnold M. Blumberg  
Frederick F. Blumberg  
Herman Blumenthal  
Joseph Boardman  
Joseph S. Bobman  
Alex. Bonavitaola  
Robert J. Bond, Jr.  
Richard R. Bongartz  
Joseph N. Bongiovanni, Jr.  
Alex Bonnie  
Russell J. Borden  
Harold J. Borofsky

Frank J. Bowden  
William N. Bower  
Donald M. Bowman  
Robert Boyd, Jr.  
Norman K. Bradley  
Alexander E. Bragdon  
Herbert Braker  
Esther Brandschain  
George M. Brantz  
Jack Braslow  
Fred Bremier, Jr.  
Herbert Brener  
Harry F. Brennan  
Harry N. Brenner  
Samuel B. Brenner  
Joseph P. Breslin  
Albert L. Bricklin  
Aaron Brint  
Jack C. Briscoe  
George Bristol  
James M. Brittain  
Matthew J. Broderick  
Raymond J. Broderick  
Alexander Brodsky  
Harry E. Brodsky  
Samuel B. Brodsky  
Samuel M. Brodsky  
William Brodsky  
Herman Bronsweig  
Milton Brooks  
J. Vincent Brophy  
Sidney S. Brotman  
Francis Shunk Brown, 3rd  
Lawrence R. Brown, Jr.  
Oscar Brown  
Richard P. Brown, Jr.  
William H. Brown, III  
Joseph C. Bruno  
Bernard C. Bryman  
Rames J. Bucci  
William M. Buchanan  
Matthew W. Bullock, Jr.  
Neil W. Burd  
A. Lincoln Burstein  
Meyer Bushman  
Geo. A. Butler  
John P. Byrne  
Thomas E. Byrne, Jr.  
Berel Caesar  
Burton Caine  
Pershing N. Calabro  
Louis S. Cali  
William I. Campbell  
William T. Campbell, Jr.

Harry A. Cantor  
 Frank Carano  
 John Rogers Carroll  
 Myer L. Carson  
 Louis Joseph Carter  
 Patrick F. Casey  
 Meyer L. Casman  
 Bruce L. Castor  
 James R. Cavanaugh  
 George Celain  
 Sidney Chait  
 Paul M. Chalfin  
 Wm. E. Chambers  
 Jerome M. Charen  
 Mark Charleston  
 I. Harry Checchio  
 Morris Chernock  
 Benjamin Cherry  
 William V. Cherry  
 Bernard S. Cheskin  
 J. Horace Churchman  
 Morris E. Ciple  
 Nicholas A. Cipriani  
 Allen Gray Clark  
 Harry L. Clark  
 Paul J. Cody  
 Joseph T. Coghlan, Jr.  
 Barnett Cohen  
 Daniel C. Cohen  
 David Cohen  
 David Jay Cohen  
 H. Myron Cohen  
 Harry Cohen  
 Harvey S. Cohen  
 Joseph J. Cohen  
 Reuben E. Cohen  
 Raymond G. Cohlberg  
 Grace Cohn  
 Paul Collis  
 Leroy Comanor  
 Joseph L. Comber  
 Jeffrey B. Conn  
 Hugh P. Connolly  
 Leo T. Connor  
 Meyer E. Cooper  
 Lewis Coren  
 Vincent B. Corsetti  
 Rocco J. Costanzo  
 Robert W. Costigan  
 Mortimer W. H. Cox  
 Robert Cox  
 Morton Craine  
 Harold Cramer  
 Fred B. Creamer  
 J. Shane Creamer  
 Leonard L. Creskoff  
 Howard L. Criden  
 Isaiah W. Crippins  
 Joseph J. Cronin  
 Bruce S. Cronlund  
 Ralph S. Croskey  
 Geoffrey J. Cunneiff  
 Martin J. Cunningham, Jr.  
 John T. Curtin  
 Chester T. Cyzio  
 Ivan Michaelson Czap  
 Don F. D'Agui  
 Francis I. Daly, Jr.  
 James J. Daly, Jr.  
 Joseph R. Danella  
 George G. D'Angelo  
 Walter T. Darmopray  
 Edward M. David

John Davidian  
 Philip Davidoff  
 Herman S. Davis  
 Maxwell L. Davis  
 John W. Dawson, Jr.  
 Harman H. Deal  
 David Justin Dean  
 Morris J. Dean  
 Edward A. deCindis  
 Alexander Deitch  
 Anthony Della Porta  
 Armand Della Porta  
 Roy Allen DeLong  
 Henry W. deLuca  
 Kip D. Denega, Jr.  
 Gerald A. Dennehey  
 Albert Dennis  
 Samuel E. Dennis  
 George C. Denniston  
 James Dessen  
 Thomas F. Devine  
 Alvin Diamond  
 Harold Diamond  
 Samuel Diamond  
 Francis X. Diebold  
 Daniel J. DiGiacomo  
 Louis J. DiGiacomo  
 Russell C. Dilks  
 Rudolph J. DiMassa  
 Arnold F. diSilvestro  
 Laurence J. DiStefano, Jr.  
 James B. Doak  
 Henry Thomas Dolan  
 Lester L. Dolfman  
 Saul Doner  
 Ralph C. Donohoe  
 Eli N. Donohy  
 John Michael Doodan  
 James Paul Dornberger  
 Charles H. Dorsett  
 James F. Doud  
 Charles E. Dougherty  
 John V. Doughten  
 Leo Francis Doyle  
 Harry J. Dragonetti  
 Harry J. Dranoff  
 William A. Draper  
 Frank S. Dreeben  
 Victor L. Drexel  
 Phillip B. Driver, Jr.  
 Henry Drizin  
 Isabel Drummond  
 Mary Alice Duffy  
 Sara Duffy  
 Walter G. Dugger  
 Paul R. Duke  
 Justin G. Duryea  
 Hubert P. Earle  
 Ralph Earle, II  
 Michael Edelman  
 Edward L. Edelstein  
 Michael H. Egnal  
 Joseph L. Ehrenreich  
 Joshua Eilberg  
 Henry I. Einbinder  
 Edgar R. Einhorn  
 Sylvan D. Einhorn  
 Jay H. Eiseman  
 Herman Eisenberg  
 Theodore Eisenberg  
 Bernard B. Eiss  
 S. Gordon Elkins  
 Harold J. Elkman

William C. Elliott  
 Jerome H. Ellis  
 Joseph S. Elmaleh  
 John W. Ennis, Jr.  
 Robert G. Erskine  
 Leonard L. Ettinger  
 Frank J. Eustace, Jr.  
 Rowland C. Evans, Jr.  
 Ralph C. Evert  
 John Kennedy Ewing, Jr.  
 Joseph Neff Ewing, Jr.  
 George V. Famiglio  
 Manfred Farber  
 Sheldon W. Farber  
 Emanuel E. Farbman  
 George Gordon Fay  
 Albert S. Fein  
 Harry Feinstein  
 I. Jack Feinstein  
 Albert J. Feldman  
 David N. Feldman  
 Eugene H. Feldman  
 Joseph G. Feldman  
 Stephen M. Feldman  
 David H. H. Felix  
 I. Bernard Fennner  
 Adda Lutz Ferguson  
 William C. Ferguson, Jr.  
 Frederick C. Fiechter, Jr.  
 Louis Samuel Fine  
 Lewis J. Finestone  
 Saul Finestone  
 I. Finkelstein  
 John F. Finney  
 Harry Fischer  
 Herbert K. Fisher  
 Melvin C. Fisher  
 Henry B. Fitzpatrick, Jr.  
 Joseph Flickstein  
 Louis F. Floge  
 Herbert L. Floum  
 John J. Foff  
 Thomas M. Foglietta  
 Michael A. Foley  
 Charles L. Ford  
 Lois G. Forer  
 Morris L. Forer  
 Frank J. Fortunato  
 Martin R. Fountain  
 Louis Fow  
 Joseph L. Fox  
 Benjamin Frank  
 Joseph W. Frank, Jr.  
 Alvin H. Frankel  
 Robert P. Frankel  
 Martin R. Freedman  
 Maurice Freedman  
 David Freeman  
 Alvin Freiberg  
 Joseph D. Freney  
 Albert H. Friedman  
 Harry Friedman  
 Maurice J. Friedman  
 Oscar B. Friedman  
 Joseph J. Frieri  
 Frederick L. Fuges  
 Virginia Funk  
 Domenic Furia  
 Edward W. Furia  
 Joseph V. Furlong, Jr.  
 Jerome E. Furnan  
 Gordon W. Gabell  
 Thomas J. Gaffney

Peter A. Galante  
 Edward A. Garabedian  
 Marvin Garfinkel  
 John C. Garner  
 James Patrick Garrity  
 Walter Gay, Jr.  
 Daniel Gelber  
 Eugene Gelfand  
 W. Glenn George  
 Harry J. Gerber  
 David L. German, Jr.  
 Edward C. German  
 George Gershenfeld  
 Stanley E. Gever  
 C. Gilpin Gibbon  
 William Gilderman  
 Edward J. Gilson  
 William G. Giltinan  
 Sidney Ginsberg  
 Arnold R. Ginsburg  
 S. Regan Ginsburg  
 William Ginsburg  
 W. Belskin Ginsburg  
 Everisto Giove  
 Joseph A. C. Girone  
 Louis J. Goffman  
 William A. Golchman  
 Albert H. Gold  
 Wm. Buchanan Gold, Jr.  
 David Goldberg  
 Julian E. Goldberg  
 Lawrence Goldberg  
 Philip Goldberg  
 Tobias Goldberg  
 Abraham J. Golden  
 Joseph D. Golden  
 Emil F. Goldhaber  
 M. Stuart Goldin  
 Benj. Goldman  
 Elliot J. Goldman  
 Larry J. Goldshorough  
 Jesse N. Goldstein  
 Melvin Bernard Goldstein  
 Paul M. Goldstein  
 Robert I. Goldy  
 Irvin J. Good  
 Lloyd A. Good, Jr.  
 Bernard J. Goodheart  
 A. Allan Goodman  
 Martin S. Goodman  
 Morton Gordesky  
 Leonard B. Gordon  
 Richard J. Gordon  
 Morton S. Gorelick  
 Maxwell P. Gorson  
 Samuel Gorson  
 Edward N. Gottlieb  
 Harry D. Gottlieb  
 Isadore Gottlieb  
 Leonard A. Gottlieb  
 Sidney B. Gottlieb  
 Marvin Gould  
 Russell C. Gourley  
 Jack Goushian  
 Leonard A. Green  
 Lewis P. Green  
 Maurice M. Green  
 Charles H. Greenberg  
 Herman H. Greenberg  
 Daniel Greene  
 Joseph E. Greene, Jr.  
 Robert W. Greenfield  
 Elhu A. Greenhouse

Daniel S. Greenstein  
 Harry J. Greenstein  
 Bronte Greenwood  
 Manuel Grife  
 Norman J. Griffin  
 Kolman M. Gross  
 S. C. Grossman  
 A. A. Guarino  
 George T. Guarnieri  
 Lionel B. Gumnit  
 Hyman A. Guth  
 Gerald J. Haas  
 Herbert H. Hadra  
 Joseph A. Hagerty  
 Dennis E. Haggerty  
 Richard L. Hahn  
 Tobias Hahn  
 Charles A. J. Halpin, Jr.  
 Perrin C. Hamilton  
 Philip M. Hammett  
 Peirce A. Hammond  
 J. Hazen Hardy, Jr.  
 Filmore S. Harowitz  
 Thomas B. Harper, III  
 William D. Harris  
 J. Barton Harrison  
 W. Jos. Harrison, III  
 Mervin J. Hartman  
 Norman Paul Harvey  
 David M. Hass  
 Robert S. Hass  
 Bancroft D. Haviland  
 Arnedo J. Hazell  
 Lester S. Hecht  
 Samuel J. Hecht  
 Henry R. Heebner  
 Joseph X. Heincer  
 Martin Heller  
 Alexander Hemphill  
 William J. Henrich, Jr.  
 Edwin S. Henry, Jr.  
 Wm. C. A. Henry  
 Earle Hepburn  
 Frederick R. Herman  
 Sidney E. Herold  
 E. Dyson Hertling  
 Robert G. Hess  
 F. Raymond Heuges  
 Ralph P. Higgins  
 Walter I. Higgins  
 E. C. Shapley Highlev  
 Charles C. Hileman, III  
 Louis G. Hill  
 Thomas L. Hill  
 Motel Hindin  
 John H. Hines  
 A. Bernard Hirsch  
 Samuel L. Hirschland  
 Abraham L. Hodes  
 Abraham Hoffermand  
 Dewey Hoffman  
 Richard S. Hoffmann  
 Donald E. Hogeland  
 John M. Holton, Jr.  
 Richard W. Hopkins  
 E. A. Hosey, Jr.  
 Thomas S. Howland  
 Walter Y. Howson  
 Henry F. Huhn  
 Leroy Humbert  
 Alan Reeve Hunt  
 Herman Hurowitz  
 A. E. Hurshman

Craig Huston  
 James Iannucci  
 Ben W. Ingber  
 Ronald H. Isenberg  
 Alvin J. Ivers  
 C. Max Ivins  
 George J. Ivins  
 Edward Lovett Jackson  
 Louis Jacobs  
 Henry I. Jacobson  
 Josef Jaffe  
 Paul L. Jaffe  
 Sidney E. Jaffe  
 Jerome Jaffee  
 Frank M. Jakobowski  
 Stanley Jakubowski  
 Harry L. Jenkins, Jr.  
 James A. Jennings  
 Louis C. Johanson  
 Seymour H. Johnson, Jr.  
 John Pemberton Jordan  
 James P. Junkin  
 Jack B. Justice  
 Samuel Kagle  
 Frank Kahn  
 David F. Kaliner  
 Jacob Kalish  
 David Kanner  
 Samuel T. Kaplan  
 David E. Karabel  
 Edward Karet  
 Sande Kartman  
 Louis Kassariach  
 Albert Loeb Katz  
 Benj. A. Katz  
 Irving J. Katz  
 Joseph Katz  
 Leon Katz  
 Marvin Katz  
 David J. Kaufman  
 Wesley M. Keely  
 William M. Keenan  
 Edward Brooks Keffer, Jr.  
 Albert W. Keller, Jr.  
 B. Bernard Kellman  
 James W. Kelly  
 John J. Kelly  
 Wm. Kendall  
 Samuel Kenin  
 Arnold M. Kessler  
 Irving N. Kieff  
 Joseph M. Kilgarif  
 J. J. Kilimnik  
 John J. King  
 Milton P. King  
 William A. King, Jr.  
 David H. Kinley, Jr.  
 Benjamin F. Kirk  
 Sol Henry Kittel  
 Raymond Kitty  
 Seymour Kivitz  
 Benjamin F. Kivnik  
 Ransome A. Kley  
 George D. Kline  
 Leon H. Kline  
 Maximillian J. Klinger  
 Sidney B. Klovsky  
 Walter E. Knecht, Jr.  
 Holman G. Knouse  
 Richard H. Knox  
 Herbert F. Kolsby  
 Alfred H. Komito  
 Henry W. Koons

Irvin J. Kopf  
 Bernard J. Korman  
 Dolores Korman  
 Harry R. Kozart  
 David A. Kraftsow  
 Herman Krakovitz  
 Matthew Kramer  
 Mitchell A. Kramer  
 Isadore Kranzel  
 Samuel E. Kratzok  
 Stanton W. Kratzok  
 Ronald Irwin Kravitz  
 Samuel Kravitz  
 Martin Kreithen  
 I. Raymond Kremer  
 Martin Kremer  
 Martin M. Krimsky  
 Stanley L. Kubacki  
 David H. Kubert  
 Benjamin Kuby  
 Howard M. Kuehner  
 Milton H. Kunkin  
 Spencer Charles Kurtz  
 Harry W. Kurtzman  
 August J. Lacko  
 Wm. F. Lahner, Jr.  
 Claude O. Lanciano  
 Manfred Landau  
 Samuel Lander  
 Symington P. Landreth  
 Rose Kotzin Landy  
 Abe Lapowsky  
 Melvin Lashner  
 Irwin S. Lasky  
 Robert A. Latrone  
 Robert F. Lavelle  
 S. Frank Laveson  
 James Francis Lawler  
 Milton S. Lazaroff  
 Herman Lazarus  
 David A. Leabman  
 William J. Lederer  
 Austin Miller Lee  
 Samuel M. Lehrer  
 Joseph M. Leib  
 Arthur W. Leibold, Jr.  
 Milton S. Leidner  
 Simon Lenson  
 Robert E. Lenton  
 Tullio Gene Leomporra  
 Jay B. Leopold  
 Maurice Levan  
 S. Robert Levant  
 Abraham Levin  
 Allen J. Levin  
 Harvey B. Levin  
 Jacob Levin  
 Leonard Levin  
 Marvin H. Levin  
 Marvin J. Levin  
 Russell R. Levin  
 Abraham J. Levinson  
 Abraham A. Levinthal  
 A. Harry Levitan  
 Gilbert S. Levitt  
 Morris B. Levitt  
 Abraham J. Levy  
 Berthold W. Levy  
 Louis E. Levy  
 Maurice S. Levy  
 Eugene John Lewis  
 Joseph H. Lieberman  
 Peter P. Liebert, 3rd

Harry C. Liebman  
 Paul A. Liebman  
 Harry J. Liederbach  
 James C. Lightfoot  
 Norman Lindenheim  
 Robert J. Lindsay, Jr.  
 Charles V. Linshaw  
 Jerome Lipman  
 Louis Lipschitz  
 Benjamin Lipschultz  
 Samuel Lipschultz  
 Edward I. Lipschutz  
 Mitchell S. Lipschutz  
 S. William Lipschutz  
 Harold B. Lipsius  
 Frank M. Lissy  
 Arthur R. Littleton  
 John E. Littleton  
 Jack Litz  
 Joseph R. Livesey  
 Erwin Lodge  
 Maurice Loeb  
 Benjamin S. Loewenstein  
 Sidney Loewenstein  
 Leo H. Loffel  
 Benjamin L. Long  
 Arthur S. Lorch  
 Charles A. Lord  
 Henry J. Lotto  
 Joseph L. Loughran  
 Arnold Lovitz  
 Hyman Lovitz  
 Fred Lowenschuss  
 Hazel F. Lowenstein  
 Chas. Lowenthal  
 Theodore H. Lunine  
 Joseph Lurie  
 Samuel Beryl Lush  
 E. Raymond Lynch  
 Thomas R. MacFarland, Jr.  
 Edward W. Madeira, Jr.  
 D. Arthur Magaziner  
 Elias Magil  
 Thomas W. Maher  
 Patrick G. Mahoney  
 Richard B. Malis  
 Robert H. Malis  
 Doris Nelson Malit  
 Edwin S. Malmred  
 Leopold Mamolen  
 Eugene F. Mande  
 Theodore R. Mann  
 Marcus Manoff  
 John S. Manos  
 Joseph C. Mansfield  
 Edward I. Marcantonio  
 Michael Marchesano  
 Edward Marcu  
 Howard Saul Marcu  
 Isadore H. Margolis  
 George E. Marinelli  
 Jerome L. Markovitz  
 Paula R. Markovitz  
 Irving Marks  
 Samuel J. Marks  
 Maurice Marmon  
 Michael A. Marolla  
 James M. Marsh  
 Sidney L. Martin  
 William Marutani  
 Samuel Marx  
 D. M. Masciantonio  
 Filindo B. Masino

John J. Mason  
 Stuart H. Mason  
 James A. Matthews, Jr.  
 Nicholas Mattioli  
 Herman Mattleman  
 Merton J. Mats  
 Meyer E. Maurer  
 Henry W. Maxmin  
 Harry R. Mayer  
 Herbert Mayers  
 Irving L. Mazer  
 Jules N. Mazia  
 Herbert S. Mednick  
 Carl J. Melone  
 Joseph B. Meranze  
 Max Meschon  
 Clarence Mesirov  
 Thomas P. Mikell  
 Albert B. Miller  
 Arthur Hagen Miller  
 George M. Miller, Jr.  
 L. Halpern Miller  
 Mitchell W. Miller  
 Nathan Miller  
 Thomas Z. Minehart  
 Charles P. Mirarchi, Jr.  
 Charles P. Mirarchi, Sr.  
 Clelland L. Mitchell  
 Herman M. Modell  
 Oscar A. Moldawer  
 David S. Molod  
 James A. Montgomery, Jr.  
 Samuel Moonblatt  
 John T. Mooney, Jr.  
 Lewis Tanner Moore  
 Thomas J. Moore  
 Maurice Mordell  
 Francis J. Morrissey, Jr.  
 Herman Moskowitz  
 George D. Mullen, Jr.  
 Josephine L. Mullen  
 Martin P. Mullen  
 John A. Mullican  
 Warren D. Mulloy  
 Daniel Mungall, Jr.  
 Daniel I. Murphy  
 Joseph T. Murphy  
 Simon Mustokoff  
 Jack M. Myers  
 John M. McAllister  
 J. Grant McCabe, III  
 James J. McCabe, Jr.  
 J. Edward McCaffrey  
 Oliver J. McCarron  
 John A. M. McCarthy  
 Colbert C. McClain  
 Raymond L. McConemy, Jr.  
 John R. McConnell  
 Thomas J. McCormack  
 James P. McCracken  
 Henry T. McCrary, Jr.  
 John J. McCresh, Jr.  
 James D. McCrudden  
 Edwin J. McDermott  
 Thomas F. McDevitt  
 H. Woodward McDowell  
 James J. McEldrew  
 Thomas E. McGough  
 James D. McHugh  
 William J. McKinley, Jr.  
 William J. McLaughlin, 3rd  
 John M. McNally, Jr.  
 George H. McNeely, III

- Dunstan McNichol  
 Bernard J. McNulty, Jr.  
 Charles F. Nahill  
 William O. Napoliello  
 Abraham Nathanson  
 Helene Nathanson  
 John F. Naulty  
 Louis Necho  
 Abraham T. Needleman  
 Alan M. Neff  
 Jesse Nevyas  
 Aubrey R. Newlin, Jr.  
 Edward K. Nichols, Jr.  
 David W. Niesenbaum  
 Samuel C. Nissenbaum  
 Daniel B. Nodler  
 George H. Nofer, II  
 Lester H. Novack  
 Anthony W. Novasitis, Jr.  
 J. Franklin Nusbaum  
 Carl P. Obermiller  
 Frank X. O'Brien  
 William J. O'Brien  
 Herbert L. Ocks  
 Charles E. O'Connor  
 Henry D. O'Connor  
 Hugh M. Odza  
 Henry B. Oestreich  
 Edward J. O'Halloran  
 Allen S. Olmsted, 2nd  
 Joseph Ominsky  
 Maxwell L. Ominsky  
 Edward A. O'Neill  
 George J. O'Neill  
 William P. O'Neill  
 Anne H. Orloff  
 Jerome E. Ornsteen  
 Alexander Osinoff  
 Martin A. Ostrow  
 Stanton S. Oswald  
 Lambert B. Ott  
 William N. Ottinger  
 Weston C. Overholt, Jr.  
 John Linwood Owens  
 Samuel Packman  
 Max D. Palitz  
 Joseph A. Palmer  
 Mitchell E. Panzer  
 Martin F. Papish  
 John A. Papola  
 George D. Parrish  
 Earl H. Parsons  
 Irwin Paul  
 Louis Mitchell Paul  
 Theodore S. Paul  
 Edmund Pawelec  
 James A. Peace  
 Simon Pearl  
 Ivan P. Pechner  
 Ira I. Pechter  
 Isadore Penn  
 Leroy E. Perper  
 Albert J. Persichetti  
 A. Charles Peruto  
 Ella N. Petersen  
 Nicholas G. Petrella  
 Victor P. Petrone  
 Morris M. Pickholtz  
 James L. J. Pie  
 Abraham Pilzer  
 Erwin L. Pincus  
 Vito N. Pisciotta  
 William A. Pistone  
 Abram P. Piwoosky  
 Charles K. Plotnick  
 Louis Pokras  
 Esther Polen  
 Charles Polis  
 Philip S. Polis  
 Harry Polish  
 Maurice Pollon  
 Samuel Polsky  
 Jerome Poltenstein  
 Benjamin Pomerantz  
 William R. Pomerantz  
 Stanley M. Poplow  
 Raymond J. Porreca  
 William Porter  
 Franklin Poul  
 John E. Power, Jr.  
 Murry Powlen  
 Lawrence Prattis  
 George S. Pressman  
 Harry Pressman  
 Robert M. Pressman  
 Roy Pressman  
 James L. Price  
 Lionel A. Prince  
 William F. Quinlan  
 Edward J. Quinn  
 Francis K. Quinn  
 Joseph F. Raab  
 Richard J. Raab  
 J. Leon Rabben  
 Walter W. Rabin  
 Paul A. Rafferty  
 Michael C. Rainone  
 Ralf L. Rakoczy  
 Edward M. Rand  
 Eleazer E. Rand  
 Richard R. Ransom  
 Joseph Rappaport  
 J. Josiah Ratner  
 William S. Rawls  
 W. Foster Reeve, III  
 James J. Regan, Jr.  
 G. Hayward Reid  
 Edward Reif  
 Raymond B. Reinl  
 Daniel M. Rendine  
 Martin J. Resnick  
 Philip S. Resnikov  
 Allan H. Reuben  
 Paul Ribner  
 Francis M. Richards, Jr.  
 Jacob S. Richman  
 Augustine J. Rieffel  
 James E. Riely  
 H. Benedict Ripkee  
 Robert S. Robbins  
 David H. Roberts  
 Bernard S. Robinson  
 William A. Robbins  
 Irwin Edward Robinson  
 Rebecca D. Rodack  
 Charles Roisman  
 Alphonsus R. Romeika  
 Nelson Romisher  
 Emanuel Romm  
 Stanley W. Root, Jr.  
 David N. Rosen  
 Allen I. Rosenberg  
 Edward B. Rosenberg  
 Richard M. Rosenbleith  
 Louis S. Rosenbloom  
 Sanford M. Rosenbloom  
 Allen M. Rosenblum  
 Harold S. Rosenbluth  
 Jay H. Rosenfeld  
 Leon Rosenfeld  
 Norman M. Rosengarten  
 Albert Rosenthal  
 Leon S. Rosenthal  
 Leonard B. Rosenthal  
 Edward Rosenwald  
 Irwin N. Rosenzweig  
 Harry L. Rossi  
 I. Bernard Rotberg  
 P. Morton Rothberg  
 Herman Rovner  
 Richard E. Ruane  
 Alan Miles Ruben  
 Raymond D. Rubens  
 Alexander N. Rubin, Jr.  
 Harry Aaron Rubin  
 Howard L. Rubin  
 Melvin Rubin  
 William Langton Rubin  
 Hanley S. Rubinsohn  
 Morris L. Rush  
 B. Royce Russell  
 Edward E. Russell  
 Ronald N. Rutenberg  
 Daniel J. Ryan  
 John Ryan  
 Patrick T. Ryan  
 Robert Stone Ryan  
 William J. Ryan, Jr.  
 Morton J. Sablosky  
 Bernard Sacks  
 Lee B. Sacks  
 Samuel I. Sacks  
 David J. Salaman  
 Sidney Salkin  
 Arthur S. Salus  
 Eugene D. Salus  
 Herbert W. Salus, Jr.  
 Peter L. Salvaggio  
 W. Albert Sanders  
 Leonard Sarner  
 Alfred Sarowitz  
 Sylvan H. Savadove  
 David N. Savitt  
 Robert W. Sayre  
 Angelo L. Scaramazza  
 George H. Scatchard  
 Henry G. Schaefer, Jr.  
 Leonard Schaeffer  
 Robert Schaeffer  
 Alexander Schamban  
 Ellis C. Schatz  
 Albert J. Schell, Jr.  
 Henry L. Schimpf, Jr.  
 E. Bernard Schlegel  
 Stanley Schlesinger  
 Albert Schlesinger  
 Eugene M. Schloss, Jr.  
 Harvey N. Schmidt  
 John C. Schmidt  
 Wm. G. Schmidt  
 Nathan J. Schneider  
 Karl I. Schofield  
 Adelbert Schroeder  
 Thomas M. Schubert  
 William E. Schubert, Jr.  
 Gilbert O. Schulman  
 Sidney Schulman  
 Hymen Schwartz  
 Isadore H. Schwartz

- M. Murray Schwartz  
 Ralph Schwartz  
 Peter B. Scuderi  
 Edwin Seave  
 Maier Segal  
 Marshall J. Seidman  
 Louis E. Seltzer  
 Paul Shalita  
 B. Jerome Shane  
 Joseph Shanis  
 Thomas L. Shannon, Jr.  
 Bernard L. Shapiro  
 Norma L. Shapiro  
 William Shapiro  
 Milton C. Sharp  
 Leon Shechtman  
 J. Dennis Sheedy  
 George D. Sheehan  
 Joseph D. Shein  
 Daniel Sherman  
 Louis Sherman  
 Louis Sherr  
 Ronald H. Sherr  
 I. Sidney Sherwin  
 Daniel R. Sherzer  
 Joseph M. Shestack  
 Samuel Shevlin  
 Francis E. Shields  
 Norman Shigon  
 Thomas Shiomos  
 Stanford Shmukler  
 Harry A. Short, Jr.  
 David Shotel  
 Bernard I. Shovlin  
 John A. Shrader  
 Harry Shrager  
 Morris M. Shuster  
 Murray H. Shusterman  
 Manuel Sidkoff  
 Jacob J. Siegal  
 Harry Siegel  
 Irvin Siegel  
 Lenard H. Sigal  
 Augustus R. Sigiamondi  
 Harold Sills  
 Edward W. Silver  
 Leonard R. Silver  
 Morton Silver  
 William A. Silver  
 Edwyn H. Silverberg  
 Miriam N. Silverberg  
 Arnold Jay Silvers  
 Paul Silverstein  
 Morton J. Simon  
 Robert E. Simons  
 Irving W. Singer  
 Joseph Singer  
 Reuben Singer  
 Frederic B. Skaroff  
 Henry E. Skaroff  
 Malvin L. Skaroff  
 Henry R. Sklar  
 J. Jerome Sklar  
 Louis H. Slifkin  
 Harry Slobberman  
 William Slom  
 Anthony J. Smith  
 Gilbert M. Smith  
 Robert M. Smith  
 Samuel Smith  
 Herbert Smolen  
 Bernard J. Smolens  
 Harry Smuckler  
 Edward Louis Snitzer  
 Edward M. Snyder  
 Manuel Sobel  
 Roger J. Soens  
 Albert B. Sothian  
 Leon Solis-Cohen, Jr.  
 Irving I. Solit  
 Arthur M. Soll  
 Arthur R. G. Solmassen  
 Richard D. Solo  
 Benjamin B. Solomon  
 Morris C. Solomon  
 D. T. Spagnoletti  
 Burton Spear  
 Leonard Spear  
 Arlen Specter  
 Alan M. Spector  
 Leon E. Sperling  
 Robert J. Spiegel  
 S. Khan Spiegel  
 Edmund Z. Spiers  
 Franklin H. Spitzer, Jr.  
 Oscar Spivack  
 Karl L. Spivak  
 Richard W. Spivak  
 Charles H. Sporkin  
 Harry D. Sporkin  
 Richard A. Sprague  
 Harry E. Sprogel  
 Herbert E. Squires  
 Michael J. Stack, Jr.  
 Frank L. Stanley  
 Joseph R. Stanton  
 George T. Steeley  
 William T. Steerman  
 Gilbert Stein  
 Ned Stein  
 Walter Stein  
 Frank M. Steinberg  
 Phillip Sterling  
 Howard E. Stern  
 I. Jerome Stern  
 Jacob Stern  
 Horace A. Stern  
 Maurice Stern  
 Stanley P. Stern  
 Joseph Sternberger  
 George Scott Stewart, III  
 Edward Stone  
 M. J. S. Stoney  
 David Stotland  
 Gustave F. Straub  
 Maurice S. Strauss  
 George V. Strong, Jr.  
 Albert R. Subers  
 Walter I. Summerfield, Jr.  
 Herman L. Sundheim  
 John R. Sutton  
 Joseph A. Sutton  
 Charles W. Sweeney  
 Edward J. Swotes  
 Harry J. Swotes  
 Edmund H. Szlapka  
 Allan M. Tabas  
 Sheldon Tabb  
 Samuel C. Tabbey  
 Herman J. Tahl  
 Mercer D. Tate  
 Hubert R. Taylor  
 Robert M. Taylor  
 Martin Techner  
 Nathan Teitelman  
 James Terpolilli  
 John F. Thaete  
 Thomas M. Thistle  
 Arthur C. Thomas  
 David E. Thomas  
 Charles I. Thompson, Jr.  
 Joseph R. Thompson  
 John J. Tinaglia  
 C. James Todaro  
 Seymour I. Toll  
 Julius H. Tolson  
 K. Anthony Toto  
 Benjamin R. Townsend  
 William J. Toy  
 James W. Tracey, III  
 Paul A. Tranchitella  
 Morris Trasken  
 Lewis H. Trautz  
 I. Nathaniel Treblow  
 Evelyn M. Trommer  
 Kenneth Trommer  
 David P. Trulli  
 I. Irving Tubis  
 Carlyle M. Tucker  
 Leonard Turner  
 Wm. James Turner  
 Ralph B. Umsted  
 Jack Van Baalen  
 Richard J. van Roden  
 Vincent C. Veldorale  
 Jerome J. Verlin  
 Martin J. Vigderman  
 Martin Vinikoor  
 Domenick Vitullo  
 Harry P. Voldow  
 Isadore S. Wachs  
 Robert E. Wachs  
 David Wachtel  
 Richard K. Wagner  
 Arnold L. Wainstein  
 Saul C. Waldbaum  
 Malcolm H. Waldron, Jr.  
 Clarence L. Walker  
 Howard Wallner  
 Max H. Walls  
 John E. Walsh, Jr.  
 Lewis Walters  
 Miles Warner  
 Rufus Scoville Watson  
 Seth W. Watson, Jr.  
 Thomas S. Weary  
 Herman Weber, Jr.  
 Robert A. Webster  
 Alan B. Weinberg  
 Harry O. Weinberg  
 Herman P. Weinberg  
 Herman Weiner  
 Morton B. Weinstein  
 Sidney L. Weinstein  
 Lewis Weinstock  
 Marvin D. Weintraub  
 Don Weisberg  
 Edward I. Weisberg  
 Emanuel G. Weiss  
 Milton M. Weiss  
 Milton H. Weissman  
 Frank Weitzman  
 Albert M. Weitzmann  
 William H. S. Wells  
 James Conwell Welsh  
 Francis G. Wenzel  
 Edward D. Werblun  
 Philip Werner  
 Henry Wessel

William L. West  
 Roger G. White  
 Thos. R. White, Jr.  
 Roger M. Whiteman  
 William A. Whiteside, Jr.  
 Alfred D. Whitman  
 D. Alexander Wicland  
 G. A. Wilderman  
 Mark Willcox, Jr.  
 Carroll G. Wille  
 Donald J. Williams  
 Edward Williams, Jr.  
 Robert W. Williams, Jr.  
 Samuel Willig  
 Thomas F. Wilson  
 Isadore Winderman

Maxwell J. Winderman  
 Elliott M. Winer  
 Arnold H. Winicov  
 Bernie F. Winkelman  
 David B. Winshel  
 Leonard S. Wissow  
 Morris Wolf  
 Russell Wolfe  
 Lenard L. Wolfe  
 Bernard Wolfman  
 Paul A. Wolkin  
 Milton A. Wollman  
 Harry Wolov  
 John H. Wood, Jr.  
 Ashton Locke Worrall  
 Curtis Wright

Samuel R. Wurtman  
 Bernard Wyman  
 Herman H. Yaffe  
 Joseph X. Yaffe  
 Francis P. Yannessia  
 Ralph B. Yardley  
 Herbert Yaskin  
 Paul Yermiah  
 J. G. Gordon Yocum  
 Herbert Gordon Zahn  
 Norman Phillip Zarwin  
 William L. Zeitz  
 Judah Zelitch  
 David B. Zoob  
 Benjamin F. Zubrack  
 David Zwanetz  
 Frank Zal

The following Judges had signed up for compulsory arbitration on or before February 17, 1958, and prior to the time when they became Judges and continued to serve until they were elevated to their judicial position:

Hon. Vito F. Canuso  
 Hon. Joseph E. Gold  
 Hon. Clifford Scott Green  
 Hon. Theodore S. Gutowicz  
 Hon. D. Donald Jamieson  
 Hon. Gregory G. Lagakos  
 Hon. Herbert S. Levin  
 Hon. John R. Meade  
 Hon. Frank J. Montemuro, Jr.

Hon. James Thomas McDermott  
 Hon. Thomas M. Reed  
 Hon. Samuel H. Rosenberg  
 Hon. Theodore B. Smith, Jr.  
 Hon. Edmund B. Spaeth, Jr.  
 Hon. James L. Stern  
 Hon. Charles Wright  
 Hon. Charles R. Weiner

## BRIEF SUMMARY OF \$10,000 ARBITRATION PROGRAM TO DATE

Approximately 30,000 stipulations were mailed out covering some 9000 cases.

To date we have received 18,100 signed stipulations. Of this number we have been able to assemble some 4200 cases in which all counsel have signed the stipulation and which are therefore ready for assignment under the new program (since individual stipulations were sent to each attorney in the case only those in which all counsel in a particular case have signed can be sent to arbitration).

In addition to the above we have received word that in excess of 1000 cases have been settled as a result of the initiation of this program. Accordingly of the 9000 cases involved in the backlog in this particular type of case we are in a position now where some 5200 have been or will be disposed of in the very near future either by settlement or by arbitration.

A substantial portion of the remaining 4000 cases will also be sent to arbitration as soon as we receive returns on the remaining number of stipulations which have not as yet come in and which number about 7000.

We have received some 680 refusals, a good number of which were based on the fact that the cases should be in compulsory arbitration and a spot check of these indicates many will be sent to the compulsory arbitration program. Some 2500 cases involve matters in which counsel allege that the amount involved exceeds \$10,000 and are thus in the Major Case Program.

Approximately 1500 cases have been referred to arbitration under this new program. Since we require at least thirty (30) days notice of the hearing we have not as yet been able to compile any substantial statistics on the workings of the program, however, we have conducted an informal survey among the busier plaintiff and defendant attorneys and the results of this survey indicate that the program will be very successful. This survey shows that the appeal rate is running somewhere around 10%, which is the same rate that has been running in the compulsory arbitration, which means in effect that one out of every ten cases in which a finding is made is being appealed. In addition, we find that approximately 50% of the cases are being settled immediately prior to or at the hearing. The findings have been averaging somewhere in the neighborhood of \$2500 to \$3000, with the highest finding reported being \$9500 and the lowest being \$250.

In cases in which there are settlements, of course, the question of any appeal becomes moot and the fact that the settlement rate is running in excess of 50% bodes well for the entire program.

It would appear that on a projected basis that if the figures on the initial survey are correct that within one year we will have disposed of some 9000 cases, of which there should be no more than 900 appeals and many of these will be settled prior to the time that they are actually tried. This being so in the very near future the time lapse between the date a case is ready for trial and the date it is assigned to trial will be no more than one year this reduced from a time lapse of some 4 to 4½ years which was in effect prior to the institution of this program.

The comment among the Bar as well as the litigants has been generally favorable since the program results in prompt disposition of the case, which is beneficial to both plaintiff and defendant.

[Reprinted From *Journal of American Insurance*, Chicago, Ill.]



**Swift justice in many civil cases  
speeds the payment of small claims.**

The other day, Paul Post of Philadelphia received a check for \$1,853.28 from the insurer of a driver whose car had struck him at a street corner near his home. Post had not been critically injured, but his ankle was fractured and he needed extended medical care and had to miss four weeks of work. Neither the claim nor the payment are notable in themselves. Of greater interest is the fact that the accident happened less than 6 months ago and that Post filed a lawsuit to recover his losses. Under the conditions of a few years ago in Philadelphia, Post would have had to wait until 1974 or 1975 before his case would have moved up the crowded court docket to trial.

But now "small claims" such as Post's go quickly to panels of volunteer lawyers for arbitration, eliminating lengthy court delay. This use of automatic arbitration has now been in effect long enough to serve as a test of whether the approach might receive wider application. The experiment may be of nationwide significance because of the impact which delay in certain courts of lesser jurisdiction has had on the operation of the entire fault system of law in these localities. The fault system has been criticized for causing inadequacies, notably in the reparation of auto accident damages, which may in fact be traceable to overloading of courts.

For this reason, mandatory arbitration of small claims is being actively considered by a number of states as part of larger packages of auto insurance reforms.

The way mandatory arbitration works in Philadelphia is that lawyers willing to serve as arbitrators register with the bar association and are listed on a roster. Cases are grouped in threes as they come in and are assigned to panels made up by selecting names at random from the list. The first attorney picked is designated panel chairman.

In the case of Paul Post, he, his lawyer, the defendant and defense counsel, witnesses for both sides, and the other two members of the panel were all asked to meet at the office of the panel chairman's law firm. (The rules call for a hearing within 30 days of the arbitrators' appointment.) Sitting around a table in the firm's law library, the panel heard testimony from witnesses and cross-examined them according to conventional trial rules. However, the informality of the setting encouraged a somewhat more conversational manner of questioning to bring out all the relevant facts in the case. An affidavit from Post's doctor was taken in evidence of his medical costs.

In a little over an hour, the panel had satisfied itself as to the facts and the chairman adjourned the hearing. A week later, the panel got together over lunch to compare their views on the case. (They're required to render judgment within 20 days of the hearing.) There was general agreement that Post's claim was valid, but that his loss claim was some-

## Arbitration: The Philadelphia Story

what high. A figure was set based upon the evidence of loss presented at the hearing. Within another week, the chairman had completed his write-up of the opinion, his secretary had typed it, and Post's attorney and the defendant's had received copies.

As soon as the defense counsel learned that Post and his lawyer did not plan an appeal, he asked the insurer to issue a check in the amount indicated in the judgment. Had an appeal been desired, a new trial would have been scheduled in the Philadelphia Court of Common Pleas upon payment by Post of the costs of the arbitration proceedings.

What do the professionals most closely involved with the Philadelphia arbitration system think about its operation? Says one insurance claimsman: "My company believes that the only good case is a closed case. The arbitration panels are 600 to 700 per cent faster than the courts and the quality of justice is at least as good. So we have to be happy. The lawyers are happier too—this system clears the junk cases out of their offices."

The Municipal Court of Philadelphia installed mandatory arbitration on February 17, 1958, for all cases in which the amount in controversy was under \$2,000. Early this year, the limit was raised to \$3,000. Prior to 1958, a huge backlog of cases had built up, causing trial delays of 24 to 30 months. In its first decade, through 1967, arbitration disposed of more than 60,000 cases and the waiting period for a regular trial was reduced to three months. In 1968, the delay was further reduced so that it is now possible to get a case heard in 30 days.

"The reason this program has been so successful," says Philadelphia's commissioner of arbitration, Alex Bonnie, "is due to the cooperation and enthusiasm of the lawyers themselves. Service on the arbitration panel is purely voluntary, and yet we have a pool of 2,500 lawyers to draw from. It's especially heartening to see the young men just recently admitted to the bar coming in to sign up for duty as arbiters. And, of course, the current list of prospective panel members includes many senior members of the bar, prosperous practitioners with busy calendars, who still answer the call of public service."

How do the claimants themselves like the system? If the low appeal rate is an indicator, they also like its operation. According to Daniel P. Ryan, a member of the Defense Research Institute, "In the 10-year period ending on December 31, 1967, over 62,000 cases were referred to arbitration. Statistics on concluded cases indicate an appeal rate of less than five per cent, and only a small percentage of appealed cases have been actually tried. Of those tried, a majority have resulted in disposition similar

to that of the arbitration panel." Adds Ryan about the arbitration system in general, "This plan was greeted with skepticism when first suggested. However, one cannot quarrel with its success. I urge the compulsory arbitration of small claims as an ideal solution to the backlog problem in appropriate jurisdictions."

And the advantages of arbitrating small claims apparently don't end with clearing up court backlogs. The Philadelphia story is also one of reduced costs. Commissioner Bonnie estimates that the cost of arbitrating a case is about 10 times less than the cost of trying the same case in court. The sizeable difference stems from the elimination of the costs of salaries for court personnel, maintenance of courtrooms, payment of jurors and other necessities of court operation.

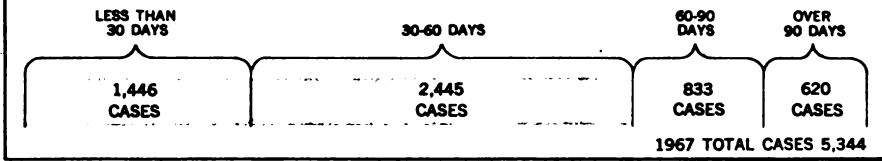
The first appropriation from the city council for arbitration fees was pegged at \$85 per case. Since 1961, the allocation has been on the basis of \$70 per case. However, the actual cost per case has turned out to be only \$62. During the first 10 years, the total allocation for arbitrator fees was \$2,502,001—an average of \$250,000 per year. As Commissioner Bonnie points out, this figure is many times smaller than what court trials of the same cases would have cost.

The only major challenge to the system was on constitutional grounds. Shortly after passage in 1952 of the legislative act allowing county courts to set up arbitration panels, the act's constitutionality was challenged. It was attacked as a violation of the due process guarantee of the Fourteenth Amendment

### A DECADE OF ARBITRATION: Summary of Performance From 1958 to 1967

Total cases referred to compulsory arbitration	66,025
Reports and awards filed...	40,541
Settled and discontinued cases.....	15,831
Miscellaneous dispositions.....	3,749
Total cases completed.....	60,121
Deferred cases.....	338
Continued cases.....	626
Hold cases (at request of counsel).....	2,234
Total cases in process but not ready for trial.....	3,198
Cases processed and pending before panels...	1,249
	<u>1,249</u>
Total cases processed.....	64,568
Unassigned cases.....	1,457

Source: County Court of Philadelphia, Compulsory Arbitration Division.

**SWIFT JUSTICE IN PHILADELPHIA****Preponderance of cases are disposed of within 60 days.***Source: County Court of Philadelphia, Compulsory Arbitration Division.*

and the right to trial by jury conferred by the Pennsylvania Constitution. However, the act was upheld by the Pennsylvania Supreme Court on the basis that a reasonable condition could be imposed on a litigant's right to a regular court trial, and that the requirement that the county be reimbursed for arbitrators' fees was not, in itself, an unreasonable condition.

Other critics of arbitration have said that the simplified procedure encourages the filing of new claims. However, in an article published in 1968, the former arbitration commissioner, Frank Zal, stated that he could find no evidence of this, but only evidence of increased settlements of claims before suits are ever instituted.

Occasionally it is charged that the flexibility and informality of mandatory arbitration tends to break down the traditional safeguards built into the judicial process. One can argue, however, that justice is best served by speedy disposition of cases, and as former Commissioner Zal reported in 1968: "It is almost the universal opinion among all litigants trying their cases in mandatory arbitration that justice is administered with real judicial-like stature... justice is being meted out with courtesy and business-like efficiency." Commissioner Bonnie says that the continuing success of the system means that the limit for size of cases will probably soon be raised to \$5,000.

Widespread praise of the way mandatory arbitration works in Philadelphia has led to the kind of interest taken by the International Association of Insurance Counsel and the Defense Research Institute in applying it in other jurisdictions. The American Mutual Insurance Alliance is also a strong backer and has appeared before several state legislatures considering auto insurance reforms to testify in favor of arbitration of small claims as part of an integrated reform package. A spokesman for the Alliance told a special commission on auto insurance in Massachusetts that "We believe that Pennsylvania's success with the arbitration of small claims is proof that the problem of court delay, where it exists, can be solved without depriving people of the

right to a jury trial. It also deflates the unsupported arguments of those who advocate drastic changes in the auto reparations system as the only way to unburden the courts and provide for prompt settlement of claims."

Complaints that the present reparations system, based on holding drivers responsible for their behavior behind the wheel, is too slow and too expensive are met head-on by arbitration systems like the one in Philadelphia. Together with other reforms, it can provide the kind of changes needed to remove the inadequacies of the automobile reparations system without throwing out the system's proven values. ○

### History of Small Claims Arbitration in Pennsylvania

Philadelphia's widely discussed program for the automatic arbitration of small claims had its origin in Butler County in western Pennsylvania. Shortly after World War II, a backlog of 500 civil suits had accumulated there with only one judge to handle the load. This threw the docket more than three years behind. A pair of enterprising local attorneys decided to do something about the situation. Their research turned up an 1836 law allowing arbitration of civil suits if both parties agreed to it. This became the basis for a proposal for automatic arbitration of all civil cases under \$500. The plan was approved by the county commissioners and gratefully put into operation by the harried judge.

The first case to be arbitrated was an automobile damage suit which was disposed within one hour. Within two years, arbitration had wiped out Butler County's 500-case backlog.

In 1952, the Pennsylvania Legislature enacted a statute permitting the court of common pleas in each county to provide, by rule of court, for mandatory arbitration of cases involving no more than \$1,000 in claimed damages. In 1957, the statute was amended to include claims up to \$2,000 and to apply to the Municipal Court of Philadelphia as well as the common pleas courts. A recent amendment makes the procedure applicable to the County Court of Allegheny County (Pittsburgh).

**1ST DECADE OF COMPULSORY ARBITRATION—EXHIBITS I TO VIII (INCLUSIVE) STATEMENT SHOWING  
PROGRESSIVE STATUS OF CASES REFERRED TO ARBITRATION FROM 1958 TO 1967**

**STATUS OF CASES AS OF DEC. 31, 1967**

Cases processed progressively	Reports and awards	Settled and discontinued	Miscellaneous disposition	Deferred cases	Continued cases	Hold cases	Pending cases	Unassigned cases
1 to 40 000.....	26,074	11,247	2,420	83	14	149	13	.....
40,001 to 45,000.....	3,276	1,152	344	30	26	158	14	.....
45,000 to 50,000.....	3,330	1,051	313	49	32	211	14	.....
50,001 to 55,000.....	3,186	981	313	66	69	284	101	.....
55,000 to 60,000.....	2,960	864	202	59	237	527	150	1
60,001 to 61,000.....	529	127	43	11	50	164	74	2
61,001 to 62,000.....	487	123	31	11	59	163	126	.....
62,001 to 63,000.....	420	117	35	9	73	152	193	1
63,000 to 64,000.....	211	103	30	12	49	170	421	4
64,001 to 65,000.....	59	49	11	8	16	141	119	597
65,001 to 66,000.....	9	17	7	.....	1	115	24	827
66,001 to 66,025.....	.....	.....	.....	.....	.....	.....	.....	25
<b>Total.....</b>	<b>40,541</b>	<b>15,831</b>	<b>3,749</b>	<b>338</b>	<b>626</b>	<b>2,234</b>	<b>1,249</b>	<b>1,457</b>

\* Most of these cases have been ordered down for trial within the past 6 months.

**EXHIBIT I**

**STATEMENT SHOWING CURRENT CUMULATIVE TOTALS AND RECAPITULATION OF TRIAL ORDERS PROCESSED  
FROM FEB. 17, 1958 TO DEC. 31, 1967**

Reports and awards filed.....	40,541
Settled and discontinued cases.....	15,831
Miscellaneous dispositions.....	3,749
<b>Total cases completed.....</b>	<b>60,121</b>
Deferred cases.....	338
Continued cases.....	626
Hold cases (at request of counsel).....	2,234
<b>Total cases in process but not ready for trial.....</b>	<b>3,198</b>
<b>Cases processed and pending before panels.....</b>	<b>1,249</b>
<b>Total cases processed.....</b>	<b>64,568</b>
<b>Unassigned cases.....</b>	<b>1,457</b>
<b>Total cases referred to compulsory arbitration from Feb. 17, 1958 to Dec. 31, 1967.....</b>	<b>66,025</b>

\* Most of these cases have been ordered down for trial within the past 6 months.

## EXHIBIT II

STATEMENT SHOWING NUMBER OF CASES FILED IN THE COUNTY COURT (EXCLUDING ADOPTION PROCEEDINGS AND BILLS DEBET SINE BREVE), CASES REFERRED TO ARBITRATION, ORIGINAL ASSIGNMENT OF CASES, SUBSEQUENT REPLACEMENTS, REPORTS AND AWARDS AND FILED DURING 1958 TO 1967, INCLUSIVE

	January	February	March	April	May	June	July	August	September	October	November	December	Total	Trespass cases
<b>Suits started:</b>														
1958 and 1959 (Monthly figures not available)	6,572	5,990	7,273	6,323	7,389	6,817	6,462	7,234	6,277	6,932	6,690	6,052	36,430	NA
1960 to 1963	3,239	3,187	3,652	3,432	3,540	3,665	3,586	3,369	3,290	3,368	3,352	3,189	80,741	NA
1964 and 1965	1,478	1,525	1,910	1,600	1,637	1,759	1,611	1,774	1,709	1,613	1,548	1,557	40,871	16,724
1966	1,588	1,425	1,635	1,528	1,701	1,754	1,832	1,898	1,514	1,640	1,579	1,474	19,721	9,053
1967													19,568	8,838
<b>Arbitration trial orders filed:</b>														
1958 and 1959	451	7,426	1,038	978	901	988	987	907	908	1,011	879	1,102	17,476	
1960 to 1963	1,833	1,665	2,238	1,981	2,025	2,178	1,748	1,766	1,771	1,867	1,779	1,948	22,799	
1964 and 1965	1,025	1,000	1,250	1,100	1,045	1,045	1,040	925	975	1,000	975	1,000	12,300	
1966	515	460	600	625	600	540	510	550	525	575	550	600	6,650	
1967	525	425	675	575	750	600	525	600	525	575	500	525	6,800	
<b>Original assignments:</b>														
1958 and 1959	603	825	1,367	1,174	1,410	978	315	75	166	1,143	586	196	8,840	
1960-1963	2,790	2,147	2,018	1,449	1,199	984	1,050	945	1,257	1,180	399	0	14,418	
1964 and 1965	935	929	1,000	1,291	1,240	1,084	1,007	60	90	0	5	2	6,876	
1966	1,251	855	1,098	300	120	1,135	135	150	600	600	192	45	5,391	
1967	1,260	1,095	1,438	165	210	315	240	405	555	630	900	0	6,213	
<b>Replacements:</b>														
1958 and 1959	250	302	553	715	706	945	590	225	241	373	257	343	5,490	
1960-1963	491	1,058	1,235	1,019	946	855	650	496	656	678	352	222	8,558	
1964 and 1965	157	352	494	502	594	624	483	178	177	97	67	66	3,794	
1966	214	387	508	378	285	146	89	72	196	284	255	119	2,872	
1967	254	520	576	299	296	226	183	126	205	282	381	327	3,677	
<b>Reports and awards filed:</b>														
1958 and 1959	282	439	668	1,053	1,143	1,271	957	436	367	413	667	679	8,425	NA
1960-1963	357	1,342	2,237	1,916	1,758	1,448	1,125	931	897	1,536	767	523	14,967	NA
1964 and 1965	136	408	601	862	1,040	1,007	476	271	362	271	156	96	6,867	13,647
1966	90	475	910	776	648	532	198	117	191	462	495	376	5,052	12,816
1967	224	504	831	621	494	328	282	228	312	425	541	554	5,344	13,896
<b>Appeals:</b>														
1958 and 1959	24	28	38	38	68	80	79	53	22	34	30	56	550	
1960-1963	58	60	202	296	211	183	144	132	79	156	127	99	1,687	
1964 and 1965	16	20	32	82	124	123	139	75	46	18	28	25	816	
1966	2	9	35	61	75	30	39	7	13	16	48	56	433	
1967	24	41	51	60	72	39	32	24	26	32	24	55	480	

1 Includes an accumulated backlog of 7,012 cases from 1932 to Feb. 18, 1958.

2 Motor vehicle cases.

EXHIBIT III.—NUMBER OF CASES RETURNED BY PANEL MEMBERS REQUIRING REPLACEMENTS DURING YEARS 1961 THROUGH 1967 INCLUSIVE

Reason for return of assigned cases	January	February	March	April	May	June	July	August	September	October	November	December	Total
<b>Settled and discontinued:</b>													
1961.....	51	124	190	167	181	161	96	96	148	188	99	47	1,548
1962 and 1963.....	106	195	278	198	175	178	148	113	146	140	63	49	1,789
1964 and 1965.....	55	117	164	156	188	204	129	62	51	32	21	16	1,195
1966.....	76	144	158	108	81	47	33	26	59	82	26	5	933
1967.....	62	160	190	89	79	79	28	27	66	99	102	91	1,072
<b>Strike, transfer, no jurisdiction, and nol. Pros:</b>													
1961.....	5	18	31	23	20	15	12	6	13	11	8	0	162
1962 and 1963.....	17	44	47	23	24	22	22	19	26	18	6	9	274
1964 and 1965.....	11	28	37	42	39	48	37	13	9	4	5	5	278
1966.....	22	23	42	23	15	8	5	7	12	15	24	7	203
1967.....	16	36	41	15	13	8	15	16	10	19	17	11	217
<b>Judgment, equity bankruptcy and assessment damages:</b>													
1961.....	3	3	6	5	4	7	4	4	3	6	1	0	46
1962 and 1963.....	5	3	10	4	5	3	6	4	5	7	0	0	52
1964 and 1965.....	1	6	7	8	7	1	6	3	1	5	0	2	47
1966.....	4	10	6	4	3	3	0	1	6	5	5	2	49
1967.....	9	9	24	10	6	3	2	4	1	10	6	3	86
<b>Deferred:</b>													
1961.....	0	3	1	7	9	1	6	1	2	3	6	2	41
1962 and 1963.....	2	3	4	6	3	8	7	4	4	7	1	4	53
1964 and 1965.....	1	10	9	14	22	12	16	4	4	2	4	5	103
1966.....	6	13	17	17	9	8	4	1	4	6	2	2	89
1967.....	7	16	16	18	13	4	3	3	4	8	18	8	118
<b>Disqualified:</b>													
1961.....	11	20	33	35	29	13	9	19	28	15	6	3	221
1962 and 1963.....	22	30	45	17	15	57	36	19	39	11	9	5	305
1964 and 1965.....	30	34	65	51	59	69	28	14	13	10	13	8	394
1966.....	56	49	46	36	38	13	4	8	41	21	21	7	360
1967.....	52	86	66	29	56	34	29	26	34	28	66	52	558
<b>Continued and hold:</b>													
1961.....	13	66	79	95	130	90	67	75	72	110	74	40	911
1962 and 1963.....	89	177	198	179	164	168	184	106	121	109	50	51	1,596
1964 and 1965.....	44	150	198	216	263	274	254	75	93	104	29	35	1,675
1966.....	43	139	225	179	113	63	40	28	70	115	68	7	1,199
1967.....	94	205	221	129	123	92	99	50	80	108	115	153	1,509
<b>Consolidated:</b>													
1961.....	2	13	1	14	7	3	6	6	4	4	5	1	66
1962 and 1963.....	8	12	19	15	9	12	4	10	18	14	0	0	130
1964 and 1965.....	5	7	14	15	16	16	13	5	6	0	0	0	97
1966.....	7	9	14	11	4	4	3	1	3	8	6	7	77
1967.....	14	9	18	9	6	6	7	2	10	10	17	9	117

EXHIBIT IV  
RECAPITULATION OF THE 13 STATISTICAL ARBITRATION REPORTS ISSUED FROM MAY 9, 1958, TO DEC. 31, 1967, INCLUSIVE

	May 9, 1958	Aug. 15, 1958	Dec. 31, 1958	June 30, 1959	Dec. 31, 1959	Dec. 31, 1960	Dec. 31, 1961	Dec. 31, 1962	Dec. 31, 1963	Dec. 31, 1964	Dec. 31, 1965	Dec. 31, 1966	Dec. 31, 1967
Reports and awards.....	611	2,077	3,343	6,831	8,414	10,724	15,437	19,470	23,275	26,641	30,158	35,202	40,541
Settled and discontinued.....	581	1,615	2,197	3,578	4,196	5,066	7,884	9,104	10,311	11,480	12,789	14,345	15,831
Miscellaneous disposition.....	39	115	200	462	687	942	1,010	1,730	2,173	2,491	2,883	3,314	3,749
Deferred.....	47	40	60	119	163	123	122	159	128	162	188	251	338
Continued.....	207	590	802	983	703	266	494	289	419	532	898	1,126	1,328
Hold.....	0	96	125	268	201	120	231	306	398	574	1,003	1,461	2,224
Number pending before panels.....	779	833	780	1,060	323	26	248	164	168	112	121	528	1,249
Annual total of cases processed from Feb. 17, 1958, to Dec. 31, 1967.....	2,264	5,366	7,507	13,301	14,697	17,267	25,426	31,222	36,872	41,982	48,045	56,227	64,568
Unprocessed.....	6,148	4,243	4,334	1,463	2,779	5,408	2,541	2,760	3,403	4,133	4,530	2,998	1,457
Total referred to compulsory arbitration.....	18,412	9,609	11,841	14,764	17,476	22,675	27,967	33,987	40,275	46,125	52,575	58,225	66,025
Periodic filings from Feb. 17, 1958.....	8,412	1,197	2,232	2,923	2,712	5,199	5,292	6,015	6,293	5,850	6,450	6,550	6,800

<sup>1</sup> The reason for the variation in the number of findings and/or reports and awards listed herein and in exhibit 7, is due to the fact that some trial orders require more than 1 report and award by reason of garnishment, retrial, etc.  
<sup>2</sup> Includes accumulated backlog of 7,102 cases from 1932 to Feb. 8, 1958.

EXHIBIT V

NUMBER OF CASES IN WHICH SUITS HAD BEEN STARTED BEGINNING WITH 1956, AND SUBSEQUENT YEARS, UP TO AND INCLUDING DECEMBER 1967, AND FOR WHICH TRIAL ORDERS WERE NOT FILED UNTIL 1967

Term:	January	February	March	April	May	June	July	August	September	October	November	December	Total
1956				1	1								2
1957													1
1958			1	1	2		2			1			12
1959		2											2
1960			3			5			2				17
1961			6			10			4				25
1962			19			25			11				63
1963			17			25			23				95
1964			48			77			63				263
1965			131			112			128				512
1966			234			349			584				2,454
1967			1,370			1,181			283	340	156	19	3,340
Total		2	1,829	2	4	1,764	2		1,115	341	157	1,584	6,809

<sup>1</sup> In December 1959, the municipal court (now county court) terms were changed from monthly terms to 4 terms, viz: March, June, and December and in September 1967 it was changed back to monthly terms.

EXHIBIT VI.—TOTAL ACCUMULATION OF SUITS ORIGINALLY STARTED IN 1952 AND SUBSEQUENT YEARS, TO AND INCLUDING DECEMBER 1967, FOR WHICH TRIAL ORDERS HAD BEEN FILED BEGINNING WITH FEBRUARY 17, 1958, AND ENDING DECEMBER 31, 1967<sup>1</sup>

Term	1952 and 1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	Total
January.....	19	29	62	140	247	323	458									1,278
February.....	29	38	73	166	322	391	430									1,448
March.....	51	52	45	126	322	501	685	1,452	1,475	1,576	1,659	1,520	1,742	1,567	1,370	14,043
April.....	41	53	70	235	429	429	402									1,659
May.....	24	48	64	247	262	369	403									1,937
June.....	58	49	92	258	313	509	521	1,487	1,562	1,766	1,877	1,819	1,902	1,746	1,181	15,731
July.....	38	58	70	285	381	414	464									1,708
August.....	43	65	85	257	301	382	578									1,659
September.....	41	55	71	246	316	457	473	1,155	1,315	1,234	1,240	1,429	1,331	1,261	263	11,123
October.....	54	62	128	300	349	439	411								349	2,126
November.....	38	52	109	236	344	465	498								156	1,994
December.....	53	42	73	231	419	379	1,333	1,246	1,434	1,541	1,463	1,382	1,351	1,306	19	12,272
Total.....	491	610	932	2,729	4,234	5,148	6,506	5,340	5,786	6,117	6,239	6,150	6,326	5,880	3,349	65,837

<sup>1</sup> It may be of interest to note that from Feb. 17, 1958 to Dec. 31, 1967, Arbitration Division also received 188 trial orders for which suits had been started in years 1932 to 1951 making total cases referred to arbitration 66,025.

**EXHIBIT VII.—AWARDS AND APPEALS BY AMOUNTS AND NUMBER OF ARBITRATORS PER CASE FROM 1958 TO 1967, INCLUSIVE 1963 TO 1967 INCLUDING REPORTS AND AWARDS INVOLVING VEHICLE CASES**

	Reports and awards cases heard by arbitrators				Appeal cases, originally heard by arbitrators				1963 to 1967 reports and awards motor vehicle cases
	Total	1	2	3	Total	1	2	3	
Findings for plaintiffs.....	23,094	42	5,477	17,575	3,200	9	829	2,362	6,324
Findings for defendants.....	10,361	20	2,235	8,106	753	-----	179	574	2,776
Settled during arbitration hearings.....	7,015	18	1,444	5,553	-----	-----	-----	-----	2,469
Miscellaneous findings.....	111	-----	16	95	15	-----	4	11	4
<b>Total findings<sup>1</sup>.....</b>	<b>40,581</b>	<b>80</b>	<b>9,172</b>	<b>31,329</b>	<b>3,968</b>	<b>9</b>	<b>1,012</b>	<b>2,947</b>	<b>11,573</b>
<b>Amounts of awards:</b>									
\$1,000.....	2,242	2	439	1,801	63	1	15	47	303
\$101 to \$200.....	4,127	2	881	3,244	148	1	30	117	843
\$201 to \$300.....	3,159	6	807	2,746	217	1	55	161	937
\$301 to \$400.....	2,628	4	808	1,816	277	-----	68	209	714
\$401 to \$500.....	2,340	5	561	1,774	319	5	80	238	685
\$501 to \$600.....	1,514	1	323	1,187	273	-----	58	204	454
\$601 to \$700.....	1,122	2	283	837	226	2	71	153	364
\$701 to \$800.....	1,203	2	297	904	238	2	66	170	415
\$801 to \$900.....	735	2	160	573	215	1	66	148	233
\$901 to \$1,000.....	790	4	214	572	228	1	67	150	278
\$1,101 to \$1,200.....	447	2	101	344	132	2	29	101	140
\$1,201 to \$1,300.....	416	1	105	310	146	-----	37	109	164
\$1,301 to \$1,400.....	364	1	83	280	116	-----	18	98	143
\$1,401 to \$1,500.....	253	-----	67	176	92	-----	28	64	94
\$1,501 to \$1,600.....	310	-----	77	233	121	-----	32	89	125
\$1,601 to \$1,700.....	157	2	45	110	58	-----	16	42	58
\$1,701 to \$1,800.....	153	-----	32	121	63	-----	14	49	70
\$1,801 to \$1,900.....	169	-----	38	131	59	-----	15	44	70
\$1,901 to \$2,000.....	113	2	29	82	34	1	8	25	34
\$2,001 to \$2,000.....	193	1	46	146	72	-----	18	54	66
\$2,000 and over.....	259	3	68	188	109	1	28	80	145
<b>Total awards for plaintiffs.....</b>	<b>23,094</b>	<b>42</b>	<b>5,477</b>	<b>17,575</b>	<b>3,209</b>	<b>18</b>	<b>829</b>	<b>2,362</b>	<b>6,324</b>

<sup>1</sup> The reason for the variation in the number of findings and/or reports and awards listed herein and in exhibit I is due to the fact that some trial orders require more than one report and award by reason of garnishment, retrial, etc.

The following chart is an attempt to analyze the number of cases and the actual amounts in controversy in each of the 5,850 trial orders filed during 1964, the 6,450 trial orders filed during 1965, the 6,650 trial orders filed during 1966, and in the 6,800 trial orders filed during 1967.

	Number of cases filed in—					Number of cases filed in—			
	1964	1965	1966	1967		1964	1965	1966	1967
\$1 to \$100.....	119	75	85	56	\$1,001 to \$1,100.....	52	50	42	59
\$101 to \$200.....	352	337	326	321	\$1,101 to \$1,200.....	55	56	60	54
\$201 to \$300.....	353	343	376	371	\$1,201 to \$1,300.....	46	43	52	56
\$301 to \$400.....	291	246	306	306	\$1,301 to \$1,400.....	34	36	45	37
\$401 to \$500.....	236	244	256	304	\$1,401 to \$1,500.....	37	34	40	45
\$501 to \$600.....	175	192	206	185	\$1,501 to \$1,600.....	35	28	28	36
\$601 to \$700.....	126	120	149	151	\$1,601 to \$1,700.....	30	21	21	33
\$701 to \$800.....	105	108	115	141	\$1,701 to \$1,800.....	25	25	23	27
\$801 to \$900.....	86	75	96	102	\$1,801 to \$1,900.....	24	25	20	26
\$901 to \$1,000.....	84	114	109	93	\$1,901 to \$2,000.....	325	414	478	247

We also had filed with us in 1964, 3,260 cases which, lawyers stated, the amounts in controversy did not exceed \$2,000, in 1965, 3,864 cases in 1966, 3,817 and in 1967, 4,150 cases in the same category.

The trial orders in the last category, involving controversies not exceeding \$2,000, is rather difficult to analyze because under the Rules of Court a litigant does not necessarily have to indicate on the trial order the exact amount in controversy. In order to be subject to Compulsory Arbitration, all that has to be stated is that the amount in controversy does not exceed \$2,000.

## NUMBER OF DISPOSITIONS DURING 1966 AND 1967 IN EACH CORRESPONDING BRACKET (\$)

	1966	1967		1966	1967
\$1 to \$100.....	214	138	\$1,201 to \$1,300.....	63	74
\$101 to \$200.....	395	329	\$1,301 to \$1,400.....	43	50
\$201 to \$300.....	422	390	\$1,401 to \$1,500.....	39	71
\$301 to \$400.....	311	277	\$1,501 to \$1,600.....	24	28
\$401 to \$500.....	315	275	\$1,601 to \$1,700.....	29	25
\$501 to \$600.....	186	194	\$1,701 to \$1,800.....	24	40
\$601 to \$700.....	143	156	\$1,801 to \$1,900.....	15	26
\$701 to \$800.....	182	204	\$1,901 to \$2,000.....	36	41
\$801 to \$900.....	102	102	\$2,000 and over.....	45	67
\$901 to \$1,000.....	116	141	SDH <sup>1</sup> .....	1,173	1,319
\$1,001 to \$1,100.....	57	82	For defendants.....	1,046	1,209
\$1,101 to \$1,200.....	59	84	Miscellaneous findings.....	13	22

<sup>1</sup> Settled during hearing.

It is interesting to note that a large percentage of the cases filed, upon final disposition, resulted in findings with amounts which were much less than the amounts originally claimed when suit was started.

\* \* \* \* \*

## COMPARATIVE MISCELLANEOUS STATISTICS

	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
Number of petitions for additional compensation.....	1	12	12	8	11	10	7	7	2	7
Amount of additional compensation.....	\$75	\$1,081.50	\$895	\$538	\$743.50	\$325	\$347	\$315	\$180	\$420
Original assignments.....	4,074	4,766	2,073	4,800	3,864	3,681	3,259	3,517	5,391	6,213
Replacements.....	2,573	2,737	1,289	2,995	2,335	2,039	1,899	1,895	2,910	3,677
Sanctions.....	178	49	55	55	129	59	86	35	81	105
Cases referred by judges.....		112	135	127	221	287	198	306	531	680
Cases involving city.....	296	5	8	10	11	218	201	210	310	313
Appeals by city.....	2					12	12	12	12	21
Total appeals.....	190	360	246	500	438	503	451	367	435	480
Instant arbitration.....						7	12	19	3	12

## TIME LAPSE, IN NUMBER OF MONTHS, BETWEEN FILING OF TRIAL ORDER AND ASSIGNMENT TO A PANEL (WAITING PERIOD)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	Over 24 months	Total cases
1964.....	93	20	23	122	692	622	931	703	41	25	15	26	15	11	3	6	6	6	3	1	3	0	1	2	2	3,372
1965.....	107	18	72	440	561	516	459	416	718	72	28	23	21	10	15	4	3	6	3	2	0	2	1	3	21	3,521
1966.....	163	23	15	534	855	1,502	590	556	430	142	21	38	33	18	28	13	10	11	11	9	2	1	50		7,052	
1967.....	244	228	1,265	1,410	673	806	199	97	102	34	18	30	19	21	12	15	16	28	13	16	9	15	3	37	34	5,344

## TIME LAPSE BETWEEN ASSIGNMENT OF A CASE TO A PANEL AND DISPOSITION BY THE PANEL

	Less than 30 days	30 to 60 days	60 to 90 days	Over 90 days	Total cases
1964.....	1,158	1,481	431	302	3,372
1965.....	1,125	1,751	364	281	3,521
1966.....	1,790	2,140	732	390	5,052
1967.....	1,446	2,445	833	620	5,344

## NUMBER OF ASSIGNMENTS REQUIRED FOR EACH CASE UNTIL THE DISPOSITION BY A PANEL

	1	2	3	4	5	Total cases
1964.....	2,849	429	81	13	0	3,372
1965.....	3,210	279	28	4	0	3,521
1966.....	4,401	550	87	13	1	5,052
1967.....	4,240	920	155	26	3	5,344

EXHIBIT VIII B.—COMPARATIVE MISCELLANEOUS STATISTICS  
 RECAPITULATION OF THE 11 STATISTICAL ARBITRATION REPORTS ISSUED FROM MAY 9, 1958 TO DEC. 31, 1965, INCLUSIVE

	May 9, 1958	Aug. 15, 1958	Dec. 31, 1958	June 30, 1959	Dec. 21, 1959	Dec. 31, 1960	Dec. 31, 1961	Dec. 31, 1962	Dec. 31, 1963	Dec. 31, 1964	Dec. 31, 1965
Reports and awards.....	611	2,077	3,343	6,831	8,414	10,724	15,437	19,470	23,275	26,641	30,158
Settled and discontinued.....	581	1,615	2,197	3,578	4,196	5,066	7,894	9,104	10,311	11,480	12,788
Miscellaneous disposition.....	39	115	200	462	697	942	1,010	1,730	2,173	2,491	2,888
Deferred cases.....	47	40	60	119	163	123	122	159	128	162	188
Continued cases.....	207	590	802	983	703	266	494	289	419	532	898
Hold cases.....	0	96	125	268	201	120	231	306	398	574	1,003
Cases pending before panels.....	779	833	780	1,060	323	26	248	164	168	112	121
Total cases processed periodically from Feb. 17, 1958, to Dec. 31, 1965.....	2,264	5,366	7,507	13,301	14,697	17,267	25,426	31,222	36,872	41,992	48,045
Total cases not processed.....	6,148	4,243	4,334	1,463	2,779	5,408	2,541	2,760	3,403	4,133	4,550
Total cases referred to compulsory arbitration.....	18,412	9,609	11,841	14,764	17,476	22,675	27,967	33,982	40,275	46,125	52,575
Number of trial orders filed periodically, beginning with Feb. 17, 1958.....	18,412	1,197	2,232	2,923	2,712	5,199	5,292	6,015	6,293	5,850	6,450

<sup>1</sup> Includes accumulated backlog of 7,102 cases from 1932 to Feb. 18, 1958.

EXHIBIT V.—TOTAL FILINGS IN CIVIL COURTS OF PHILADELPHIA, LISTINGS AND DISPOSITIONS (1958-65 INCLUSIVE)

Common pleas courts	Filings			Ordered on list		Dispositions									
	County court	Equity nonjury list	County court	Common pleas consolidated		Common pleas consolidated				County court				Arbitration <sup>1</sup>	
				Jury	Nonjury	Jury list		Equity nonjury		Jury	Nonjury	Jury	Nonjury	Arbitration <sup>1</sup>	Other
						Verdict	Other	Total	Finding	Other	Total				
1958.....	14,464	47,460	4,952	2,237	1,578	1,465	1,250	4,112	11,841	1,941	1,250	1,075	910	5,740	7,304
1959.....	16,137	51,444	4,510	1,798	1,465	1,465	3,919	3,702	5,635	1,999	1,859	1,559	864	7,567	7,197
1960.....	17,125	53,959	4,193	1,292	1,984	1,984	7,199	3,266	5,199	3,403	1,884	570	1,087	3,425	10,144
1961.....	19,155	57,193	4,635	1,175	3,304	3,304	5,473	3,403	5,292	2,712	3,403	502	1,884	5,769	9,764
1962.....	20,973	60,176	4,623	1,330	1,984	1,984	2,654	3,277	6,015	2,712	3,403	622	1,330	5,973	11,272
1963.....	21,216	64,173	4,143	1,322	2,414	2,414	2,916	2,718	1,110	618	728	451	1,445	5,455	11,385
1964.....	23,756	69,322	4,980	1,026	2,545	1,942	4,557	4,700	252	1,086	1,338	483	1,363	4,853	22,817
1965.....														5,223	
Total.....														45,835	

<sup>1</sup> Includes, reports and awards: Settled; Discontinued and miscellaneous dispositions.

<sup>2</sup> Default judgments were not tabulated for 1964.

A look at the following statistical table should be convincing :

Panel	Number of rounds in 9 years	Total R. & A. filed	Number of times chairman	Amount earned as chairman	Amount earned as regular panel member	Extra compensation	Amount earned in 9 years
A.....	15	45	5	\$480	\$635	-----	\$1,115
B.....	15	45	5	660	525	-----	1,185
C.....	15	45	9	840	405	\$35	1,280
D.....	13 $\frac{3}{4}$	41	5	480	565	-----	1,045
E.....	15	45	5	480	585	25	1,090
F.....	14 $\frac{2}{3}$	44	7	630	545	-----	1,175
G.....	12 $\frac{2}{3}$	38	6	540	440	-----	980
H.....	13 $\frac{1}{2}$	41	5	540	520	-----	1,060
I.....	14 $\frac{1}{2}$	44	5	450	645	-----	1,095
J.....	13 $\frac{1}{2}$	40	6	570	465	-----	1,035
K.....	14 $\frac{1}{3}$	43	6	570	540	-----	1,110
L.....	14	42	5	480	585	-----	1,065

The Philadelphia public definitely owes a great debt of gratitude to the Philadelphia lawyers, for without the help of these 2,500 lawyers in the area of trial by lawyer panels, the backlog might well be about ten years. The Honorable William A. Schnader, former Attorney General of Pennsylvania expressed it very clearly in his letter to our department on February 3, 1966 in which he said as follows: "I can't imagine what the situation of the Philadelphia courts would be if it were not for the operation of the Compulsory Arbitration Division of the County Court. Year after year your Division becomes more useful."

Considering the fact that during the past nine years, over 59,000 cases have been taken out of the courtrooms and referred to Compulsory Arbitration, makes it very obvious that the Court backlogs would have been intolerable without this method of trying cases. As we have said on numerous occasions, this could not have been accomplished with our current judicial manpower and limited courtroom facilities. Because of the limited number of judges and courtrooms, thousands of cases still have to wait their turn, and the ever present age-old law of supply and demand makes it impossible to cut the backlog in the cases over 2,000. On the other hand, in trial by lawyer panels, the process is reversed. Here we have 2,500 "judges" and 2,500 "courtrooms" constantly available for the trial of cases. Under such circumstances, the words "case on trial", have significance and, in addition, the litigants and their attorneys are convinced they have to take affirmative action and can no longer add to court congestion by delaying tactics. This, of course, results in final and speedy disposition of cases. We cannot overlook the fact that very often, planned delaying tactics are a significant factor in court congestion. Professor Robert G. Leh, of Gettysburg College, who recently made a study of Compulsory Arbitration (trial by lawyer panels) had this to say in his recent unpublished dissertation:

"Delay extends beyond the courthouse steps into law offices and litigants' homes and places of business. Its existence entwines with motives of man, personal and petty, great and general, spiritual and material. Therefore its cause cannot be simply laid to factors like too many cases, too few judges, and attractive forms. Within the period starting when a case trial-ordered languishes for any of a number of reasons, and ending when the judge's gavel falls at last in judgment, a device which filters out large numbers of cases from a congested civil docket for an exceptionally rapid and certain trial will have an administrative effect. This is compulsory arbitration's forte."

Compulsory Arbitration, or trial by lawyer panels, of course, becomes even more significant and more essential as community legal services are being increased, and as we move into the direction of more extended concepts of justice and increase considerably the amount of free legal service to the poor. The Federal Office of Economic Opportunity (OEO) has many more plans for free legal service to the indigent. By reason of this new concept, many more people are going to have a right, and will avail themselves more often to legal services in civil as well as in criminal cases. Because of this there has been and will be a greater increase in the amount of civil litigation. We also cannot overlook the fact that because of the ever increasing changes brought about by the current United States Supreme Court decisions, there have been additional in-

creasing demands in the criminal courtrooms and the tendency has been to shift the judicial manpower and courtroom facilities for the prosecution of criminal cases. This of course does not make the picture look too bright in the area of civil litigation.

It is interesting to note that the United States is not the only place that is having a problem with court congestion. A recent Associated Press Report stated that Italian Courts have 1.7 million cases awaiting action. An Italian State prosecutor who commented on the report predicted that it might take ten years for some of the cases to be handled. However, the fact that foreign countries have the same problem does not make the average United States citizen feel any better, nor does it improve our outlook for the immediate future. Recently, on July 29, 1966, it was reported in the issue of Time magazine that, "Court congestion is subverting United States justice. In many instances citizens are led to settle civil cases out of court for less than his due—or give up entirely." The only solution to this, of course, is more judges and more courtroom facilities, but in the foreseeable future as a practical solution, this can only be made possible by utilizing lawyer panels. In spite of this, there are some lawyers who are still opposed to the use of Compulsory Arbitration even in lower jurisdictional amounts. This, however, cannot be avoided in a society where freedom of expression is available to all of us and we must agree, of course, that this is the way it should be. The minority should also have a right to express itself.

We do not claim perfection for the idea of trial by lawyer panels. There are still some mountain tops to be reached. However, as Marvin Comisky, former Chancellor of the Philadelphia Bar Association once said, "It is pleasant every now and then when a plateau is reached, to pause for a view of the valley." It is at the end of every year, we believe, that we reach such a plateau and, therefore, let us now take a look at the accomplishments of trial by lawyer panels in 1966.

As in previous years, we operated under the guidance of a County Court Judiciary Committee consisting of the Honorable James L. Stern, sitting as Chairman, the Honorable Gregory G. Lagakos and the Honorable Clifford Scott Green. We were also directed by a Bar Association Committee consisting of fifty lawyers, with Joseph V. Restifo, Esquire, as Chairman, William H. Brown, III, Esquire as Vice-Chairman, Leonard M. Sagot, Esquire as Secretary and Joseph N. Bongiovanni, Esquire, Liaison to Board of Governors. As a result of the efforts of this committee, the status of Compulsory arbitration has been enhanced to the extent where we have our monthly statistical reports published regularly in *The Legal Intelligencer* and findings of panel members are likewise published daily in *The Intelligencer* on the same par with all of the dispositions in the Federal, State and County Court. Of this we are proud.

Trial by lawyer panels received a great deal of attention on April 27, 1966 in courtroom 453, City Hall, from 6:00 to 9:00 P.M., when we were given an opportunity to participate in Law Day observance and the public was given an opportunity to observe the actual trial of cases. Present during the entire evening in the audience was the Honorable Arlin M. Adams.

April 19, 1966, Comment by Supreme Court of Pennsylvania which appears in 421 Penna. Supreme Court Reporter, in middle of page 145 is also worthwhile noting.

On September 9, 1966, we were again placed in the spotlight during the Bench-Bar Conference in Atlantic City when a panel consisting of Judge James L. Stern, Sylvan M. Cohen, Esquire, and Commissioner Frank Zal, presented the topic, "Should the Jurisdiction of Compulsory Arbitration (trial by lawyer panels) be increased from \$2,000. to \$5,000.?" A full capacity turnout of lawyers attended this session.

We, of course, are still getting attention nationally. On October 13, 1966 we received the following letter from Stephen A. Millwid, Esquire, of the firm of Lord, Bissell & Brook in Chicago, Illinois:

"I am pleased to report that with the help of the information contained in the two articles that you furnished me, the affirmative on the question as to whether arbitration should be employed as a supplement in the trial of personal injury cases prevailed by a vote of two-to-one of all of those present at the debate that was held at the Chicago Bar Association on October 13, 1966. We are now hopeful that the Arbitration Committee of the Bar Association will make appropriate recommendations to the Board of Managers, who in turn would then request action by the Chief Judge of the Circuit Court of Cook County on this subject."

Just a few weeks ago we were informed by Ronald Miller, who is studying for his Ph.D. under Dr. George Taylor at the University of Pennsylvania, that he was making a study of the possibility of applying Compulsory Arbitration on a broader area—to extend to cases over \$5,000. and also into real estate. On December 12, 1966, the Board of Governors of the Philadelphia Bar Association, at its December meeting, voted to seek legislation which would increase the jurisdiction of Compulsory Arbitration from the present \$2,000. limit to \$3,500. The State Legislature, of course, would have to amend its statute which established the Compulsory Arbitration system. (C.P. Judges are asking increase to \$5000. See Resolution).

We are also very pleased to note that on December 20, 1966, Governor Scranton announced the appointment of the Honorable Samuel H. Rosenberg, one of our original panel members and who is still serving on panels, to be Judge of Philadelphia County Court, succeeding the late Judge Francis F. Burch. The Honorable Samuel H. Rosenberg served with distinction as a panel member and we know that he will establish a fine record as a Judge in the County Court.

Of course, our own President Judge of the County Court, the Honorable Adrian Bonnelly, during this past year as in previous years, has continued to herald the accomplishments of trial by lawyer panels in the County Court of Philadelphia, whenever and wherever he has been called upon to speak throughout the breadth and width of this great U.S.A.

In the area of appeals, we are grateful to note that with the removal of a number of marginal insurance companies, the number of appeals has definitely decreased. Our records also show that in 1964, Judges referred 198 cases to Compulsory Arbitration. In 1965, there were over 300 such referrals and in 1966 there were 531 referrals. A review of our statistics will also show that out of the 5,052 reports and awards filed during 1966, 1,790 cases were disposed of within 30 days after the cases were assigned to a panel; 2,140 within 30 to 60 days; 732 within 60 to 90 days, and the remaining 390 cases took 90 days or more. We also note that out of the aforementioned 5,052 cases, 4,401 were disposed of by original panels; 550 had to be reassigned to a second panel; 87 had to be reassigned to 2nd and 3rd panels; 13 had to be reassigned to 2nd, 3rd, and 4th panels; and one case had to be reassigned to a 2nd, 3rd, 4th, and 5th panel. Our records show that out of the 5,052 cases, 1,590 were referred to panels within FIVE MONTHS after filing of a trial order; 1,502 within SIX MONTHS; 590 within SEVEN MONTHS; 556 within EIGHT MONTHS; 764 within TWENTY-FOUR MONTHS, and 50 over 24 months.

It is again interesting to note that in 1966, in our 9th year of Compulsory Arbitration, we were still cleaning up "old suits", some of which had been started as far back as 1954, but had not been ordered down for trial until this year. This, of course, is still an improvement as compared to 1958, the beginning year of compulsory arbitration in Philadelphia, when some of the trial orders turned over to us went back to 1932.

In the area of court review, now that the problems and interpretations of the question as to "record costs" have finally been crystalized, the activities have been reduced to a minimum. However, we do wish to make known a reference to the case of Hawthorne vs. Penchiff, 40 D & C, 2d p. 43, which held that,

"An appeal from the award of a board of arbitrators will, on motion, be quashed as defective, where appellant failed to file the recognizances required by section 27 of the Act of June 16, 1836, P.L. 715, within 20 days after the date of the entry of the award; and in such case, appellant's petition for leave to file a recognizance nunc pro tunc will be denied.

We also note that in the case of Stewart vs. Masson, 40 D & C, 2d p. 401, it was held that,

"An appeal from an award of a board of arbitrators will, on plaintiff's petition, be dismissed as defective, where appellant, by reason of counsel's oversight, failed to file a recognizance, as required by section 27 of the Act of June 16, 1836, P.L. 715, as amended, within 20 days after the date of the entry of the award."

We should also like to make note of the case of Hammerman vs. Lee in the Superior Court of Pennsylvania No. 659, October 1965, which was an appeal from March, 1964, No. 7735 E. of the County Court of Philadelphia. And this again raised the question of what is meant by trial de novo when a case is appealed from Compulsory Arbitration.

We likewise wish to note that in the case of *Lane vs. Union National Bank of New Brighton*, 40 D & C, 2d, p. 411, it was held that,

"An action to quiet title, wherein plaintiff seeks to have a mortgage held by defendant decreed to be satisfied and discharged by reason of its payment, involves title to real estate, since the mortgage holds a security title; hence, the action is not within the jurisdiction of a board of arbitrators under the Act of June 16, 1836, P.L. 715, as added and amended, providing for arbitration of cases except those involving real estate."

Last but not least, we would like to take this opportunity to thank all of the various city departments, particularly the Prothonotary's office who has given us the utmost cooperation. Finally, of course, we also owe a debt of gratitude to our staff: Edward Deeney, Bernadette A. Hanna, Amos Volpe, Elwood Weiser and Regina D. Yannatella.

Respectfully submitted.

FRANK ZAL,  
*Commissioner, Compulsory Arbitration.*

(The following was referred to on p. 500:)

#### CONSUMERS INSURANCE INFORMATION BUREAU

To: State Association Executive Secretaries/Managers/Vice Presidents  
Local Boards Presidents/Secretaries  
State Advertising Chairmen.

GENTLEMEN: Here is your "Summer 1971—Information Kit" in support of the national campaign of the Consumers Insurance Information Bureau.

This kit contains the following items:

1. A guide: "How to Approach the Press."
2. "A Safety Effort": reprint of an editorial based on C.I.I.B. material.
3. Two stories on: (a) Drunk Driving; (b) Habitual Offender.

These have been drafted with spaces for the name of the local spokesman and association title.

4. Two suggested editorials: (a) In support of uniform traffic laws; (b) "One for the Road"—urging readers to demand stronger drunk driving laws.

5. Feature article—"Three Strikes and You're In."

6. Sample letter to the editor.

7. Sample script for short radio interview on highway safety.

8. A speech script: "A Start on Greater Highway Safety—George Will Do It" approximately 10 minutes, designed for civic, church and service groups.

9. Two Radio Public Service Spots: (a) 60 second—Constitutional right to life; (b) 30 second—Think before you drink.

10. Poster—"Safe Driving Is a Habit to Get Hooked On" originated by the Iowa Association. Order forms and return envelopes are also enclosed.

11. Booklet—"Alcohol Safety Countermeasure Program" produced by the National Highway Traffic Safety Administration of the Department of Transportation. It is included for your information on government programs involving drinking drivers. You may wish to determine if your community is participating in the "ASAP" program and, if so, how you can help.

A Review of this material will show that it is designed for local use and where feasible with local identification as to the association and agent. This is the grass roots approach which is most vital if our campaign is to achieve the results we all desire.

Further editors and radio station news directors, are constantly looking for usable material particularly when it has a local tie-in.

Please keep the Consumers Insurance Information Bureau alerted to the receptivity and use of material. Clippings from the local paper or tape recordings from radio stations are of considerable help in preparing future material. They show the Bureau what type of information is most likely to be accepted.

#### HOW TO APPROACH THE PRESS

1. Appoint one person as news contact or publicity chairman who would be responsible for placing this material and other with local news media. It would be helpful to name someone with previous experience in dealing with the press.

2. The publicity chairman should contact local editors and radio and television news directors asking for appointments to see them at their offices.

3. At their meeting the publicity chairman should outline the rationale for the campaign and its goals and ask for the support of the news media.

4. Show the editors the material and offer it to them and identify yourself as the news contact locally, providing them with office and home phone numbers.

5. Discuss with him Association plans for the campaign and suggest where the editor might find a logical local tie-in for news purposes. These might include speeches by Association officers; the continuation of a driver education program; a special highway safety promotion; a local Big "I" Day celebration; etc.

6. Don't be discouraged if you get an initially cool reception. News men are notorious skeptics and many may suspect this to be a disguised commercial venture.

7. Enlist the endorsement of public officials for the campaign. Chiefs of Police and Sheriffs will probably welcome your efforts—after all, if successful, their jobs will be easier. Ask if you can use their names in publicity.

8. Keep in mind photo potentials for the local paper.

9. Get from the editors their news deadlines. You have a better chance of having a story used if you get it in to the desk well in advance of the deadline.

10. Keep in mind upcoming events. The week preceding holidays and long weekends will probably be excellent times for highway safety material. The re-opening of school is another.

11. As for any sales presentation, do some homework. Have all material re-typed on association letterhead, double spaced, starting one-third down on first sheet. Delete suggested use and other directions in ( ) at top. When filling in space for names and association, do not underline. Segregate material according to media to be approached. You may see possibility of multiple placement for some material, editorials or short features. When using the same item twice, have it typed twice, don't use carbons.

(The editorial below appeared in the June 21, 1971 edition of the Wichita (Kansas) Eagle. It is based upon a story which was contained in the Spring Information Kit and is an example of the type of editorial support the press can offer to you in your community efforts.)

#### A SAFETY EFFORT

Call it enlightened self-interest if you will, but the Independent Insurance Agents of Wichita, in connection with the National Association of Independent Insurance Agents, is starting a campaign aimed at getting habitual traffic offenders barred from the highways.

That's not all the campaign includes in the way of improved traffic safety, but it's one of the most important points.

Figures that came out during the Wichita group's meeting here recently showed that only 4 to 12 per cent of the nation's drivers are "the culpable, the wanton, the depraved, the arrogant, the driver who is completely indifferent to the safety of others." These are the habitual offenders.

Of these, drunk drivers constitute the greatest percentage, the insurance men said, causing more than half the nation's 55,300 traffic deaths in 1970.

What the insurance groups are seeking are minimum criteria for habitual offender legislation and implementation of such laws in Kansas; strict enforcement of laws by local and state police; strict enforcement by the courts and jail sentences rather than fines for habitual offenders; periodic tests for health and vision, and the involvement of local civic clubs with the habitual offender problem.

They have put their finger on the main causes of accidents. Too many people who have caused serious accidents are merely given slaps on the wrist and released to go right back to their dangerous highway habits. Too many courts regard traffic violations as minors offenses, and because of their leniency, police see little use in being strict. Too many persons who are unfit for health reasons are driving cars. Remedy these situations and we'd all be safer on the road.

The insurance men are to be congratulated on their efforts. Other citizens should join them in their campaign.

(This article is one of two contained in this kit which were originally circulated through an editorial service. If they have not as yet appeared in your local publications, you might present either to the editor, inserting your association's name in the appropriate space.)

## ONE-TENTH OF ONE PERCENT MEANS YOU'RE DRUNK

One-tenth of one percent is miniscule in today's world of super-statistics and percentages but in at least one case it could be fatal.

According to the Consumers Insurance Information Bureau and the ----- Association of Insurance Agents, this is the blood-alcohol level at which the American Medical Association, the U.S. Department of Transportation, the National Safety Council, and the U.S. Public Health Service say a person has reached intoxication . . . he is drunk.

Yet, in many states the blood-alcohol level used for the purposes of testing and arresting a suspected drunk driver is 0.15 per cent, half again as high as medical and safety authorities have approved.

In 1970, over 55,000 people lost their lives in highway accidents. A compilation of research projects from different states indicates that alcohol was a factor in 60 per cent of the highway deaths studied. Sources from other studies say that alcohol played a role in anywhere from 50 to 87 percent of fatal accidents.

Citing other figures, the Consumers Insurance Information Bureau said nearly 5 million people were injured in traffic accidents last year. In all, there were 22 million such accidents which added up to an economic loss of better than \$16 billion.

The National Safety Council says: "If all the causes of highway accidents could be eliminated except one—50 per cent of the total problem would still have to be solved. The one major cause of all traffic fatalities involves drinking and driving."

The 150,000-member National Association of Insurance Agents is out to help the consumer. It is the sponsor of the Consumer Insurance Information Bureau through which it lends assistance to the individual independent agent in generating community support for strengthening weak traffic laws, having old laws updated and all laws enforced.

Laws relating to the menace of the drunk driver, particularly the blood-alcohol level limits, were established in most states based on recommendations made in the 1930's. They were established to protect the person who may have a higher tolerance to alcohol than most but times were then far different.

There were few 4,000-pound, high-powered vehicles compared to the numbers we see in every block today. Freeways, expressways and superhighways were still to be envisioned. The mobility of the 1970's was not foreseen. These are only a few of the demands for quick updating of 40-year-old standards.

The ultimate aim of the C.I.I.B. program is to eliminate the drunk driver and the habitual offender from the road.

Local independent agents are enlisting support from civic, service and church groups to reach the consumer. Consumers are being organized to insist on the passage and enforcement of modern traffic laws. C.I.I.B. is taking its impetus from Secretary of Transportation John A. Volpe, who encouraged such action at a forum on alcohol and driving when he said: "... you'll be lobbying for the most precious thing the Lord gave us . . . you'll be lobbying for life!"

(This article is one of two contained in this kit which were originally circulated through an editorial service. If they have not as yet appeared in your local publications, you might present either to the editor, inserting your association's name in the appropriate space.)

## HABITUAL OFFENDER MUST NOT HAVE A LICENSE TO KILL

Economic prosperity is often viewed in terms of housing starts and babies born but another view of the nation's affluence shows that there are more cars than homes or babies.

The automobile has brought tremendous benefits—but also unnecessary tragedy to the American scene, says ----- of ----- Statistics shows that last year the automobile was involved in 22 million accidents resulting in nearly 5 million injuries and more than 55,000 deaths.

Far too many of these accidents and too much of the highway carnage is caused by habitual offenders—those people who, because they were once issued a driver's license, now act as if they had a license to kill.

According to the Consumers Insurance Information Bureau, the habitual offender is the drunk driver, the reckless driver and the speeder or person who continues to drive even though his license has been suspended.

Getting the habitual offender off the road has become a key objective of the Consumers Insurance Information Bureau.

Sponsored by the 150,000-member National Association of Insurance Agents, the Bureau has launched a nationwide effort to arouse citizens to work to ban the habitual offender from the road.

The Bureau seeks:

The establishment of minimum criteria for habitual offender legislation in all 50 states.

Strict enforcement of laws by local and state police without fear or favor.

Strict court action including the imposition of jail sentences rather than fines on habitual offenders.

Instigation of periodic tests for driver health and vision.

Pointing to Virginia, where a Habitual Offender Law became effective in 1968, the Bureau notes that the highway death rate was reduced in just two years from 5.2 to 4.8 per 100,000 vehicle miles. If similar legislation were in effect in all states, many thousands of lives would be saved each year.

Drunken drivers are by far the largest group of habitual offenders, according to the C.I.I.B. Although it is unlawful in all 50 states for a person to operate a motor vehicle on a public highway while under the influence of intoxicating liquor, alcohol is a factor in nearly half of the highway deaths.

Recognizing that basic actions are necessary to alleviate the highway crisis, the National Association of Insurance Agents, through the C.I.I.B., is enlisting consumer safety groups and civic organizations to assist in its drive to make the highways safer for all citizens.

#### EDITORIAL—UNIFORM HIGHWAY CODE

The end of the school year has put millions of American families on the nation's highways in search of fun and adventure.

The adventure they find in crossing into another state by automobile may very well be lacking in fun, according to the Consumers Insurance Information Bureau. This is caused by the wide variance in traffic laws between states.

On speed limits, they range from "Reasonable and Prudent" in two states, to 50 to 75 mph, in the others. The nearly completed Interstate Highway System is Federally funded and built to Federal specifications, yet speed limits on the system vary from 65 to 75 mph from state to state.

The definition of drunk driving is more startling according to the Bureau, which is sponsored by its 150,000 member National Association of Insurance Agents. Nineteen states still use 0.15 percent blood-alcohol level for defining drunk driving, or have no statutory presumptive level at all. Fortunately, 31 states use laws presuming drunkenness at 0.10, or below, the level at which leading safety and medical authorities say a person is drunk.

Financial responsibility laws, auto insurance liability, vary just as widely. An unfortunate motorist having an accident in another state may find himself not meeting that state's law. He then would have to post a cash bond or face suspension of driving privileges in that state.

CIIB suggests national uniformity of all traffic laws. It says that with the mobility of our citizens today, we have a right to know what to expect of the law and be afforded protection of the law equally at home or on vacation.

We agree and recommend that at the next Conference of Governors, the 50 chief executives set the machinery in motion to develop such a uniform code.

#### EDITORIAL—ONE FOR THE ROAD

Let's have one for the road.

This one being a stiff law to get drunk drivers off our highways. The legislature will convene again in ——— but it's not too early to start impressing on our local representatives that the highway carnage caused by the drinking driver must be stopped and now!

The Consumers Insurance Information Bureau says that 50 per cent of all highway fatalities involve alcohol in some way. The Bureau, which is sponsored by the 150,000 member National Association of Insurance Agents, notes that in 1970, nearly 28,000 people lost their lives because some people drank too much then tried to drive.

The ideal solution is to identify these people before they get into their cars but the practical solution is for the state legislature to review all laws relating

to drinking and driving and bring them up to the needs of the 1970's and 1980's. Three steps which can be taken according to CIIB are:

1. Reduce the presumed blood-alcohol level below 0.10 per cent for establishing a driver as being drunk or impaired.
2. Empower all police agencies to make pre-arrest tests for drunkenness and establish a requirement for them being given in suspicious circumstances.
3. Establish mandatory license suspension and jail terms for convicted drunk drivers and permanent revocation of driving privileges and extended jail terms for repeaters.

We are not looking to fill our state's jails but we are looking for the threat of such severe penalties to be sufficient to produce more *thinking* and fewer *drinking* drivers.

If the safety and security of your family means as much to you as it does to us, then we recommend you immediately begin writing to your state legislator demanding that in the next session, this state bring its laws up to date and make sure they are enforced.

Let's work together to prevent these unconscionable accidents.

---

(Feature news story for placement in local papers. Insert local association name in blank.)

### THREE STRIKES AND YOU'RE IN—PRISON

#### TOUGH TRAFFIC LAWS AIM OF NEW CONSUMER CRUSADE

The judge looks down from the bench at the defendant as he completes his sentencing, "... you shall be confined to the state penitentiary for not less than one nor more than five years."

The crime for which the defendant has been found guilty is not burglary, embezzlement, assault or theft but that of being a hazardous driver. More correctly, under Virginia law, a "Habitual Offender". A driver who has been convicted on three or more occasions for drunk or impaired driving, manslaughter, driving after his license was revoked, hit and run, or a felony involving the use of a motor vehicle.

In addition, the defendant has been guilty of driving a vehicle after his license was revoked under provisions of the "Habitual Offender" act.

In Baton Rouge, La., a police officer may request a breath test of a suspected drunk driver before he places him under arrest. If the suspect refuses the test, he is liable to fines of \$200 and/or a jail sentence up to 60 days. The state legislature of Louisiana has since enacted a similar state law.

These tough laws have been enacted and others are following because in 1970 over 55,000 people were killed and nearly 5 million injured in motor vehicle accidents throughout the United States.

Taking the lead for modern traffic laws and their enforcement is the Consumers Insurance Information Bureau with an immediate target of getting the habitual offender and the drunk driver off the highway. It is organizing a national consumer campaign to demand action in all 50 states.

The Bureau is supported in its program by the National Association of Insurance Agents and the ----- Association of Insurance Agents. The Virginia Association of Insurance Agents was instrumental in the passage of that state's strict law.

According to the Bureau, alcohol is the primary cause of traffic fatalities. Quoting the National Safety Council, it says: "If all the causes of highway accidents could be eliminated except one—50 percent of the total problem would still have to be solved. The one major cause of all traffic fatalities involves drinking and driving."

In New York's Westchester County a study showed that in 83 single-vehicle fatal accidents, 49 per cent of the drivers had blood-alcohol levels in considerable excess of what medical authorities determine as constituting drunkenness. The U.S. Public Health Service asserts that drinking appears to play a role in from 50 to 87 per cent of fatal traffic accidents.

Aside from the tragedy of death and injury, there is another price being extracted. In 1970, there were 22 million vehicle accidents in the United States resulting in an economic loss of \$16 billion.

The Bureau estimates that there are 106 million drivers in the country but only 4 to 12 per cent are in the category of the reckless driver—habitual of-

fenders. It is the 88 to 96 per cent, conscientious drivers, who are paying the tab. As in many other areas of American Life today, the consumer is beginning to yell about the price and availability of auto insurance.

It is the cry of the consumer that the C.I.I.B. is looking to turn into action. Specifically, the national program has the following goals:

1. Insist on a minimum criteria for legislation in all 50 states.
2. Demand strict enforcement of laws by local and state police—without fear or favor.
3. Insist on strict enforcement of laws by the courts and urge courts to impose jail sentences rather than fines on habitual offenders.
4. Require periodic tests for health and vision.

The C.I.I.B. acknowledges that the task will not be easy. It cites that more than 20 years passed before 47 of our states enacted "Implied Consent" laws which provide that an arrested operator of a motor vehicle consents to chemical tests to determine alcoholic influence. If the driver does not consent he is liable to having his license suspended or revoked. Even today, the Bureau notes, the three remaining states have not enacted such laws.

Subsequent to the passage of the Virginia Habitual Offender law in 1968, New Hampshire, Rhode Island, Vermont and Maine have passed similar legislation. Laws are now pending in several other legislatures.

In the case of Virginia, since its law went into effect, more than 2,225 drivers have been certified as being habitual offenders and of the number 1,110 were convicted.

Under the Virginia law's ultimate provision, 20 drivers had been convicted of operating a vehicle after their licenses had been revoked . . . and all 20 are now serving prison terms of one to five years in the Virginia penitentiary.

Most importantly, in the first two years the habitual offender law was in effect, the death rate in Virginia dropped to 4.8 from 5.2 per 100 million vehicle miles.

On the problem of drunk driving alone, the Baton Rouge, La. Police Department reported that not only did the citizens of that city accept the law but there was a 300 per cent increase in arrests for driving while intoxicated with an actual conviction rate of those arrested above 50 per cent.

It is this type of "minimum" criteria which the Consumers Insurance Information Bureau is recommending as the basis for legislation in all states.

The consumer is being urged to write letters to newspapers, radio and television stations demanding editorial support for his "constitutional right to life" by getting habitual offenders off the highway.

The course of action to solve the problem already has support from no less than cabinet level. Secretary of Transportation John A. Volpe called upon citizens to become involved when he said at a forum on alcohol and driving:

"Be activists! Be tenacious! Be sincere! Never let go. Become a people's lobby for highway safety. Organize teams and put pressure on courts, police departments, attorneys general, governors and legislatures for stricter laws on drunken driving. Your insistence on action will ensure success. You'll be lobbying for the most precious thing the Lord gave us . . . you'll be lobbying for life!"

#### MODEL LETTER TO THE EDITOR

(This model letter to the editor is designed as a positive response to an editorial endorsing stricter driving regulations, action against drunk drivers or habitual offenders, etc. It has been used effectively. Space is provided for appropriate association name.)

Mr. -----  
 Editor—Editorial Page  
 Publication  
 Street  
 City, State, Zip

DEAR MR. -----: Your fine editorial "(title)" of (date) has been called to my attention by several of our independent agent members.

On behalf of the National Association of Insurance Agents with its 150,000 members coast-to-coast, and the (state) Association, compliments are certainly in order to both the (appropriate local organization) and yourselves for your efforts to do something about the convicted drunk drivers who simply ignore license revocations.

We believe that taking the habitual traffic offender off the road is a necessary first step in bringing about a return to highway safety and in helping to

solve the current difficult insurance situation. Furthermore, we are doing something about it.

The ----- Association, through the N.A.I.A. and the Consumers Insurance Information Bureau, is enlisting broad consumer support for a national program with the following specific goals:

- (1) Insist in minimum criteria for habitual offender legislation in all 50 states.
- (2) Demand strict enforcement of laws by local and state police—without fear or favor.
- (3) Urge courts to impose jail sentences rather than fines on habitual offenders.
- (4) Require periodic tests for driver health and vision.

A major forward step was taken in 1968 when Virginia enacted a habitual offender law. The Virginia law has resulted in over 1,100 drivers being convicted as habitual offenders. Twenty of these persons have subsequently been caught driving without licenses and are now serving time in the Virginia Penitentiary. Since the Virginia law went into effect, the death rate has dropped from 5.2 to 4.8 per 100-million vehicle miles, which compares with the national average of 5.5 deaths per 100-million miles.

If legislation similar to Virginia's was in effect in all states, tens of thousands of lives would be saved, and the current auto insurance difficulties would certainly be resolved.

Again, congratulations on your stand.

Sincerely,

\_\_\_\_\_  
*Local Association Official.*

The ----- Association, through the N.A.I.A. and the Consumers Insurance Information Bureau, is enlisting broad consumer support for a national program with the following specific goals:

- (1) Insist in minimum criteria for habitual offender legislation in all 50 states.
- (2) Demand strict enforcement of laws by local and state police—without fear or favor.
- (3) Urge courts to impose jail sentences rather than fines on habitual offenders.
- (4) Require periodic tests for driver health and vision.

A major forward step was taken in 1968 when Virginia enacted a habitual offender law. The Virginia law has resulted in over 1,100 drivers being convicted as habitual offenders. Twenty of these persons have subsequently been caught driving without licenses and are now serving time in the Virginia Penitentiary. Since the Virginia law went into effect, the death rate has dropped from 5.2 to 4.8 per 100-million vehicle miles, which compares with the national average of 5.5 deaths per 100-million miles.

If legislation similar to Virginia's was in effect in all states, tens of thousands of lives would be saved, and the current auto insurance difficulties would certainly be resolved.

Again, congratulations on your stand.

Sincerely,

\_\_\_\_\_  
*Local Association Official.*

Radio or Television Script for local station use. In person interview 8-10 min. This interview covers the subject of the drunk driver.

*Announcer:* This is ----- of station ----- And the program is -----

Today I'm speaking with ----- of the ----- Association of Independent Insurance Agents about one of the most important problems of the day—that of highway safety and the role of the habitual offending driver.

Mr. -----'s association is part of the 150,000 member National Association of Insurance Agents. This organization of independent insurance men is initiating, through the recently-formed Consumers Insurance Information Bureau, a campaign to get the habitual offending driver off the road and to improve highway safety for all of us.

Suppose we start at the beginning, Mr. -----, just who is the habitual offender?

*Agent:* Well, (*announcer*), we define the habitual offender as the drunken driver, the speed maniac, the hit-and-run driver, the careless motorist, the person behind the wheel without a driver's license. In short, he is the driver who is

continually disregarding the laws of the state in which he is operating his vehicle.

**Announcer:** Just how serious is the habitual offender problem in this country?

**Agent:** All evidence shows that approximately 90 per cent of the driving public stays well within the legal limits. The habitual offender is a part of only the remaining 10 per cent of the driving population. This small portion of the citizenry last year accounted for more than one-half of the 55,300 deaths occurring on our highways. These few drivers—who cause destruction far out of proportion to their number—are the ones the National Association of Insurance Agents is trying to remove from the road.

**Announcer:** Does any particular category of habitual offender stand out as a prime cause of highway accidents. I mean, who is the worst habitual offender?

**Agent:** Without any question, the drunken driver is the worst offender. And he is a primary target of the Consumers Insurance Information Bureau. Many states still have driving codes based on attitudes and situations existing in the 1930's and 1940's—laws which are woefully inadequate. A blood alcohol level of .10 percent is considered sufficient by the medical profession to justify calling a person drunk. The Bureau is striving to get all states to adopt the .10 percent figure in defining a drunk driver. Fortunately 31 states have already adopted this standard. Next, of course, is strict enforcement by police and the courts.

**Announcer:** What do you expect to accomplish? Just what can the individual citizen do?

**Agent:** Well, Mr. -----, the first step is primarily educational. We hope, through the Consumers Insurance Information Bureau, to acquaint the public with the offenses of the habitual offender . . . to increase awareness of the cause behind many of the deaths on our highways and then to make the public and the consumer into forcing legislation which will get the habitual offender off the road. With the support of the public, we hope to substantially reduce the deaths on the highway.

**Announcer:** Then the National Association of Insurance Agents is looking for legislative changes?

**Agent:** That's correct. We are seeking minimum criteria for habitual offender legislation in all 50 states. We are looking for a law similar to the Virginia law which was passed in June 1968. Under this law, the habitual offender is one who has been convicted three or more times of a major offense, or 12 or more times of lesser offenses, within a 10 year period. If a driver accumulates enough violations to make him a habitual offender, his driving license is revoked for life. And, if such a person is caught driving after his license has been revoked, he faces a mandatory 1-to-5 year penitentiary sentence which cannot be suspended.

**Announcer:** Is the law working in Virginia? For example, are habitual offenders going to jail and have fatalities been reduced?

**Agent:** They have indeed. In the two years following passage of the Virginia law, the highway death rate dropped from 5.2 to 4.8 per 100-million-vehicle-miles . . . compared with the U.S. average of 5.5. During that same period well over 2,000 drivers were certified as habitual offenders. And, of these, 20 are now serving terms after being convicted of driving after their license had been revoked. We believe the same sort of results can be accomplished on a nation-wide scale.

**Announcer:** What is the situation here in -----?

**Agent:** -- state -- law currently defines a drunk driver as one with a blood alcohol content of ----- per cent. (Latest figure should be readily available from local police or motor vehicle bureau.) As I noted before, the medical profession feels a person is drunk at the 0.10 level.

**Announcer:** What prompts the National Association of Insurance Agents to undertake such a massive task?

**Agent:** You're right, -----, it is a massive task—a tremendous undertaking. But we believe that the deaths on the highway must be stopped. And that they can only be stopped by going directly to their cause. Many people, as you know, are studying means of compensating the victims, but this will not *stop* the fatalities. Still others are seeking to improve the vehicle—to build a bumper able to withstand a 5 or 10 mile an hour crash, to add other safety features. But, we cannot ignore the fact that it is the individual at the root of the problem—that we cannot stop the accidents until we get tighter, tougher licensing laws, and tighter and tougher enforcement in the courts and give the maximum penalty to any habitual offender.

**Announcer:** Is it true that if traffic accidents are reduced, that the insurance companies will be able to reduce rates?

**Agent:** Certainly, the saving of human life is our primary goal. But it is also true that if we reduce the amount of money paid out by the insurance industry—which in 1970 alone was in excess of 16 billion dollars—it follows that insurance premiums will come down. But as long as the mayhem on the highway continues, as long as human life is lost, and as long as the costs of automobile repairs, medical care, hospitalization, and many other costs continue their inflationary trends . . . insurance rates can't very well be reduced. Thus, it is obvious that we want to try to stop the mayhem on the highway and thereby reduce the amount of money which the public must pay out for insurance.

**Announcer:** How soon could you see such a trend developing?

**Agent:** Well, -----, a target date is very hard to set and it will vary from area to area. First we need to have the improved loss experience on which to base the premium rates. This will take time, but it will come about. You've got to remember, however, that the insurance industry is continually facing increased costs of claims through inflation and that we've got to see enough of a decrease in accidents to offset these inflationary trends before we can reduce rates to the insurance buyer. Insurance rates don't develop in a vacuum, they are the result of a wide variety of factors.

**Announcer:** Which takes us back to the habitual offending driver?

**Agent:** That's right. In order to make any progress, we must start at the beginning . . . at the source of trouble. We in the (state) Association, the National Association of Insurance Agents and the Consumers Insurance Information Bureau hope that by alerting and arousing the public we can bring about a reduction in highway accidents, improve traffic safety for all our citizens and restore the old pleasures of driving.

(Suggested text for speech to Civic, Church and Service Organization—approximately 10 minutes)

#### A START TOWARD GREATER HIGHWAY SAFETY—GEORGE WILL DO IT

Some people say that an insurance man never stops selling and in a sense I'm not going to disappoint you good folks today.

What I would like to sell you in the next few minutes is an idea not insurance. The idea is keeping ourselves and our children alive and free from the fear of disaster on the highways.

That's a pretty strong statement, I know. The truth is though that with all the technology available to us today, we are facing disastrous circumstances every time we drive our cars.

One thing about the insurance business, we always have facts and figures available to us. I would like to review some sad ones for you but if you've heard or read them before, listen again.

In 1970 alone:

55,300 Americans were killed in highway accidents

Over 4,800,000 were injured in highway accidents

There were nearly 22 million highway accidents

They caused an economic loss of better than \$16 billion.

This, of course says nothing of the personal loss and tragedy of hundreds of thousands of families.

If these statistics sound rather remote, let's get them a little closer to home. Here in (state,) ----- people died in highway accidents last year and in (county or city), ----- of our neighbors were killed.

This is a somber theme for such a meeting as this but it is something we had better, as citizens, be prepared to face. I don't want you to think that there is nothing being done about it but I do want you to realize that we, collectively, can and must do something about it.

As an independent insurance agent, I am a member of the ----- Association of Insurance Agents and a member of the National Association as well. Obviously, we're pretty close to this situation as writers of auto insurance. And, we don't like what we see.

The National Association of Insurance Agents has initiated a program to make our highways safer for all of us. But there is a catch in the program. The catch is that we are going to have George do it. And the George is you—and me.

I don't think that anyone will argue that the statistics I cited previously are disgraceful. We pride ourselves on our technological expertise yet we still see highways being built which are contributing factors to the rate of destruction we experience every year. We still see cars being produced unable to withstand even minor bumps much less the serious head-ons we read about every day.

Of course, our technological expertise really is not of any value when we come to the primary cause of highway accidents and that is people. It's still people who drive the cars on the new highways and do stupid things, repeatedly, and who wind up in the hospitals and morgues.

Here is where you come in, George. Those responsible for laws and their enforcement tend to respond to the attitudes of the citizen. If the citizen is apparently lax and unconcerned, there is not likely to be an uproar among legislators to pass stronger laws. If the citizen does not seem too concerned about any but the most serious offenses then police and the courts will tend to be lenient.

The point being that if we are to improve highway safety here in ----- and across the country, the Georges of the country had better let the legislators, police and the courts know that this is what they want.

In specific terms, the habitual offender and the drunk driver must be swept from the roads. The habitual offender is the driver who has been guilty of multiple traffic offenses and may have even had his license suspended one or more times. The drunk driver, very often, is someone who has a drinking problem and may not realize it or he may be the fellow who, as many of us have done, enjoyed himself at a party a little too much.

Don't get me wrong, we insurance agents are not proposing that the jails of the country be filled with errant drivers, we want everyone to know that the laws governing operation of motor vehicles have been passed for good reason.

We want to see old laws updated, weak laws strengthened and all laws enforced.

We would also like to see jail sentences rather than fines being handed down in habitual offender cases. If the threat of severe punishment is present and known, motorists will think more clearly before they take unnecessary chances.

One of the saddest facts from 1970 is that of the 55,000 plus people killed in highway accidents, one-third of them were youngsters between the ages of 15 and 24. How do we equate this kind of loss with a lenient attitude toward so-called minor violations of law?

We don't think the country can afford to wait. In the past 10 years, over 500,000 people have been killed on the highways. Where do we draw the line?

Some municipalities and states are doing something now. In Chicago, the Cook County supervising judge of the traffic court, Raymond K. Berg, decided to call a halt. He initiated a crackdown on drunk drivers whereby those convicted get a seven day jail term and a full year's revocation of driving privileges. Effective? In the first quarter of this year there were 50 death registered but in 1970 there were 73. This is a reduction of 32 percent. The penalties don't seem so tough now, do they?

The State of Virginia passed a strong Habitual Offender law. A driver convicted of a combination of serious violations numbering three, is automatically referred to a court. If the record is accurate, the Court certifies him as a Habitual Offender which means a lifetime revocation of his license. He can petition the court after 10 years for re-instatement.

The kicker in the law is that anyone caught and convicted of driving after revocation under this law gets a one to five year sentence in the state penitentiary with no part of the sentence to be suspended. Over 20 habitual offenders are now serving such terms.

Once again, it sounds pretty harsh. But the State of Virginia has reduced its highway death rate to 4.8 per 100 million miles from 5.2. The national rate is still right around 5.5.

What I am saying is—Georges of the country unite—safe highways are your responsibility. Let's get started right here and let our public officials, our police and our courts know that the stupidity must stop and we're ready to help.

#### HIGHWAY SAFETY PUBLIC SERVICE RADIO SPOT

(60 Seconds)

Our constitution states clearly that all of us have the right to life, liberty and the pursuit of happiness. Watch out, however, there are those around us who would permanently deny us our life and liberty in their pursuit of pleasure.

These tyrants are the nation's drunk drivers—there were over 28,000 people denied their constitutional right to life last year by drunk drivers. There were over 2 and one-half million other people denied their liberty, some permanently, resulting from injuries caused by these same drunk drivers.

The Consumers Insurance Information Bureau points out enforcement of drunk driver laws is too lenient. We must make the threat of severe punishment so strong that those who might drink and then drive will *think* before they *drink*.

Only you can insure continuation of your family's constitutional right to life. Demand in writing that your municipal and state authorities begin now to get this menace off our roads. It's your life—protect it.

This public service announcement was brought to you by the -----  
Association of Insurance Agents and radio station -----

#### HIGHWAY SAFETY PUBLIC SERVICE RADIO SPOT

(30 Seconds)

Think before you drink.

In 1970, too many people did not and over 28,000 persons died in traffic accidents where alcohol was a direct contributing factor. The Consumers Insurance Information Bureau says that in 1971 another 28,000 people, or more, will die on our highways due to drunk driving.

We cannot afford this senseless waste of life. You *can* do something. Write to your local and state authorities today, demand strong enforcement of laws to rid the roads of drunk drivers.

It's your life, protect it.

#### SAFE DRIVING IS A HABIT TO GET HOOKED ON

Poster is now available from the Independent Insurance Agents of Iowa.

Uses for poster—Distribute to all secondary schools; Work in cooperation with state safety departments for state-wide distribution; General distribution to communities: All local agents can display.

Guidelines for quantities—In Iowa we distributed 5,000.

#### Prices:

1,000	-----	\$142. 50
3,000	-----	228. 00
5,000	-----	346. 00
10,000	-----	594. 00

For imprint of your individual state or local name on orders of 3,000 or more, please add \$18.00. If imprint is not ordered, only the "Big I" emblem will appear on the lower portion of poster.

NOTE.—The enclosed sample is exact size, color and paper weight as those that will be shipped to you. If you have a special size, use, or quantity for which you would like a price quotation, please write: "Big I" Posters—P. O. Box 279, Des Moines, Iowa 50301.

#### ORDER FORM

Please enclose your check for the total amount. Shipments will be made Freight Collect.

Name: -----

Address: -----

City: ----- State: ----- Zip: -----

Quantity: -----

Imprint? Yes ☐ No ☐

Name to be imprinted -----  
(please print)

ALLOW THREE WEEKS FOR DELIVERY

# SAFE DRIVING IS A HABIT TO GET HOOKED ON!

Independent Insurance Agents of Iowa



# **The Alcohol Safety Countermeasures Program**

**Spearheading the  
national effort to get  
problem drinkers off  
America's highways and  
to keep them off  
until their problem  
is alleviated**

**NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
U. S. Department of Transportation  
Revised, April 1971**

# The Problem

Nearly everybody has been aware since the automobile was invented that the use of alcohol by its driver is a major threat to life and limb on the highway. Slogans have underscored this dangerous combination (drinking-driving) — "If you drive, don't drink," "Gasoline and alcohol don't mix," "Make the One for the Road Coffee," and numerous others. But until publication of the "1968 Alcohol and Highway Safety Report" by the U.S. Department of Transportation, and its presentation to Congress, relatively few persons were really aware of the magnitude of alcohol-related highway casualties.

The report, which summarizes studies using the best scientific investigative techniques — including blood alcohol concentration tests, extensive research, and detailed analyses of police records — showed that the use of alcohol by drivers on the highways, particularly the continued, excessive use of alcohol by *problem drinkers*, is the single most important highway safety issue today.

The report also showed that alcohol involvement by drivers and pedestrians is responsible for more deaths on the highway than any other single factor. It disclosed, as a matter of fact, that drinking drivers and pedestrians contribute directly to about half of all traffic deaths and injuries.

The report further revealed, contrary to long-held popular opinion, that most of those deaths were not primarily the result of actions by what is commonly known as the "social drinker," but by the driver who drinks to great excess. It is emphasized in the report that in most of the alcohol-related traffic deaths, consumption had been to an excess seldom attained by the general driving public. This information was verified by highway spot checks and by extensive police and clinical investigations of blood alcohol levels of highway victims.

# What Are Problem Drinkers?

Problem drinkers are those who have more than one arrest for offenses involving alcohol—including non-highway arrests, who are known to the various health and social agencies in their communities, and who often have a history of troubled relationships with their employers, their families and their banks or creditors.

Most significant of all, they are the kind of drinkers, who, when checked at the time of their highway crash or arrest, had been drinking very heavily as indicated by their blood alcohol levels. Their blood alcohol concentration is 50 to 100 percent higher than the .10 percent level which the National Highway Traffic Safety Administration has set as indicating intoxication. Blood alcohol concentration refers to the amount of alcohol in a person's bloodstream. It is the commonly used scientific method of laboratory analysis to determine whether or not a person is drunk.

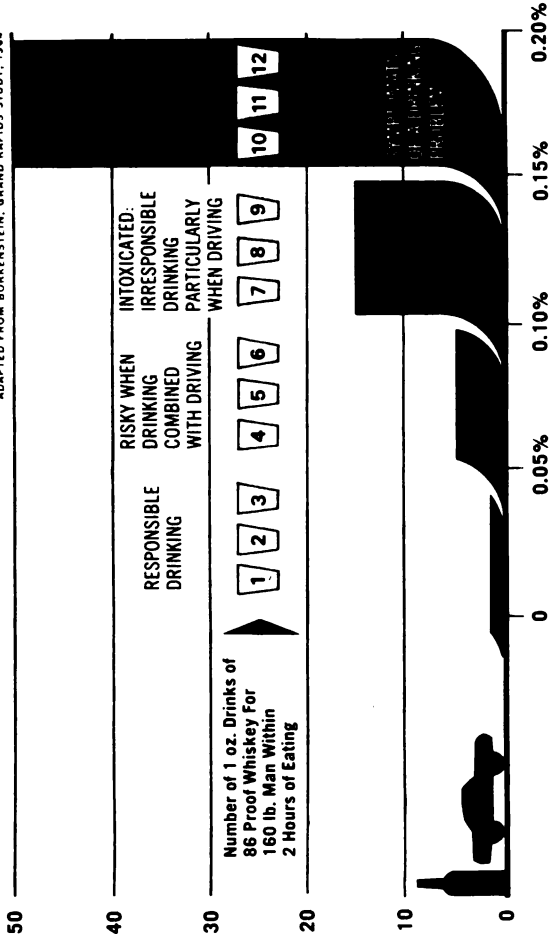
It is an extremely accurate method and can easily be given with the help of standard breath testing equipment available in most police stations.

The Federal standard on alcohol, which is part of the Federal Government's effort to improve highway safety, and which all states are directed to adopt, establishes that a blood alcohol concentration of .10 percent is legal evidence of drunkenness. This standard for drivers also calls for uniform "implied consent" laws which legally give police the right to check suspected drivers' blood alcohol concentrations. Even .10 percent blood alcohol concentration is considered too high by most authorities. A person with .10 percent concentration is almost seven times more likely to have a vehicle collision or to become a pedestrian casualty than a non-drinker. A

# Drinking and Highway Safety

## Relative Risk of Crash

ADAPTED FROM BORKENSTEIN, GRAND RAPIDS STUDY, 1964



Blood Alcohol Concentration

person with a .15 percent (B.A.C.) is 25 times more likely to have a collision than an abstainer. Medical authorities and exhaustive research have demonstrated that a person with this high blood alcohol concentration is totally incapable, physically and mentally, of driving a motor vehicle.

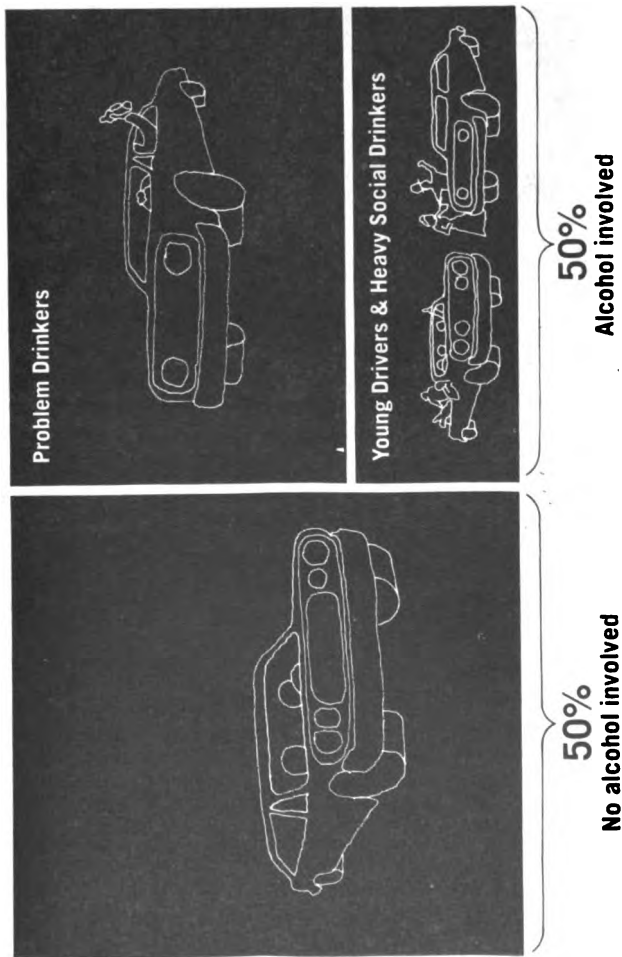
To reach a concentration of .15 percent, for example, within two hours after eating, a 160 pound man would have to drink ten, one-ounce drinks of .86 proof whiskey all to be consumed in one hour. The same drinker would reach the same state of intoxication with one-third less quantity, if taken on an empty stomach. Larger drinks hasten the process. That's a lot of drinking. Think about it. It is clearly a level of drinking way above the "social drinker class," and is, in itself, indicative of a drinking problem.

The 1968 report to Congress disclosed that it is excessive drinking, particularly by individuals with drinking problems, which causes the majority of the traffic deaths in which alcohol is involved. This report, on which the NHTSA's high priority Alcohol Safety Countermeasures Program is based, is available from the U. S. Government Printing Office, Washington, D. C.

Total highway deaths in the United States have been rising every year. In 1969, an all time high figure of 56,400 highway deaths was reported by the National Safety Council. Thus, our annual highway fatality rate is approaching, and during the 70's will probably pass 60,000 a year. Alcohol will play a role in 50 percent or about 30,000 of these

## Alcohol and Responsibility for Fatal Accidents

**1969 = 56,400 Traffic Deaths:**



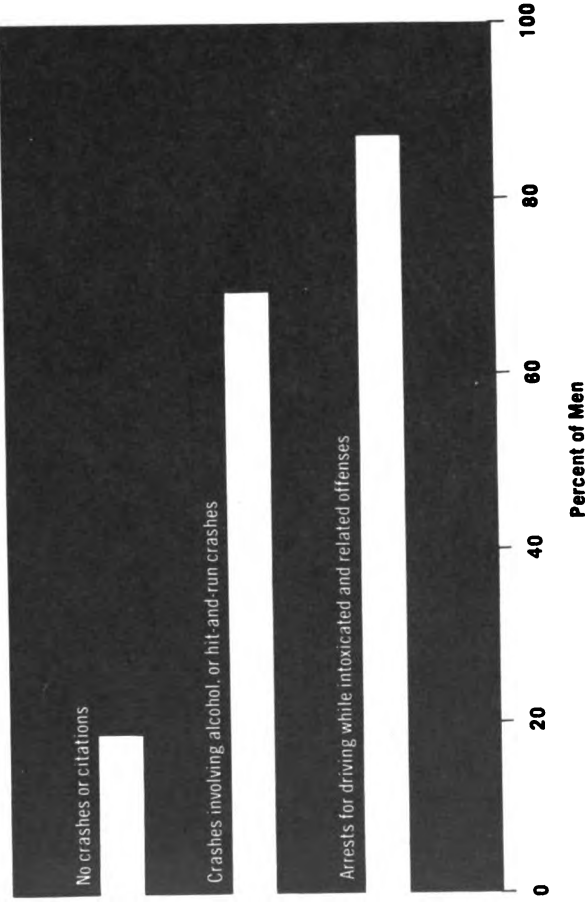
fatalities. Of these 30,000, an estimated two-thirds or 20,000 will be deaths involving problem drinker drivers or pedestrians who will kill themselves, their passengers and other innocent men, women and children as a result of driving after drinking excessively. The other third of the alcohol related accidents will involve social drinkers, particularly heavy social drinkers driving after a spree and young drivers who are learning both to drink and to drive.

Safety experts use the term "problem drinker" to describe about two-thirds of the drinking drivers and pedestrians who cause fatalities on the highway, not only because blood tests give evidence that their consumption of alcohol is far beyond normal levels, but, in addition, because research indicates that they have experienced problems with alcohol in the past. Studies of backgrounds of drinking drivers responsible for fatal crashes show that as many as two-thirds have had a problem with alcohol before, as indicated by a previous arrest, hospitalization or a social agency contact in which excessive drinking played a role. Thus, many of the drivers responsible for fatal collisions give evidence of both abusive use of alcohol and prior problem drinking.

Experts disagree in their estimates of the number of problem drinkers who drive, but most would agree that at least seven percent of drivers have a drinking problem. Seven percent of the total driving population of 108 million means there are about seven million-plus problem drinkers on the highways today who are the primary hazard in terms of

## Percentage of Men Known to Police Department and/or to Community Service Agencies Prior to Arrest or Crash Involvement

ADAPTED FROM WALLER, JAMA, 1967



alcohol-related deaths and serious injuries. That's about one driver out of every 15. Something ought to be done about *highway killer problem drinkers*, don't you think? Something is!

A combination of growing public awareness, scientific research, and improved laws is being applied to the control of the problem drinker, and headway is being made. The door is wide open for a full-scale attack on this Number 1 highway safety hazard.

The Administration's Alcohol Safety Countermeasures Program is the Federal Government's response to pleas from concerned citizens to do something about highway fatalities caused by problem drinkers; to get them off the highways, and to keep them off because they are medically sick.

It's a tough program, a program with teeth in it, but one that can work, given the cooperation of state and local community organizations. It takes into full consideration the schools of medical and social thought that have established the need of medical treatment for problem drinkers. It also regards the untreated problem drinker as a menace to society, when he gets behind the wheel of a car.

Logically, the problem drinker should no more be allowed free and uncontrolled access to the wheel of a car on a highway than a potential killer should be allowed to carry a concealed and loaded pistol.

# Three Important Measures

The Alcohol Safety Countermeasures Program strikes at the problem drinker with a three-pronged attack which, when effectively implemented by the states and local communities will reduce the death and injury toll on the Nation's highways due to alcohol.

The major measures are:

- Identification of the problem drinker. He must be separated from the great mass of social drinkers. He must be singled out, not just on the highways, even with innovative methods such as the use of video tape recorders and breath testing equipment, but through court records and the resources of social and health agencies, insurance companies, and other organizations. The program calls for setting up procedures under which these records and other relevant information from police files and driver licensing agencies can be exchanged on problem drinkers and their accident involvement. It also encourages social agencies to provide information to driver licensing officials and the courts concerning the identity of problem drinkers, with appropriate safeguards of the physician-patient relationship.

Consider: If records of court convictions for alcohol-involved offenses are readily available

to driver licensing officials, they can easily determine whether or not a person should be permitted to drive. Also, if the cooperation of social and health agencies which provide services to problem drinkers is obtained, special driver retraining and driver assistance programs can be made available to the problem drinkers.

- Decision on courses of action. The decision to take the most appropriate means to make sure a convicted drunken driver doesn't get on the highway again after drinking will be made by the courts and driver licensing officials, who will reach their conclusions on a presentencing investigation after the individual's guilt is determined.

Through this investigation, those who are responsible for decision making can determine whether or not the person is a problem drinker, and, if so, what rehabilitation procedures or action on his future driving should be taken. They can work closely with medical examiners who will provide driver license applicants a hearing when there is data indicating a drinking problem. After medical examination of the individual, they will be prepared to make a fair judgment. Actions that can be taken include revoking the accused's driver's permit,

- Action to assure a follow-up to carry out the decisions concerning the most appropriate procedures to reduce the drinking-driving problem, and to assure that drivers who drink excessively do not operate a vehicle on the highways.

None of these countermeasures will be effectively implemented automatically, easily, or without objection. Effective implementation requires technical knowledge and considerable expenditure of public funds.

In all cases the cooperation, interest and strong support by the local community, its citizens, its safety organizations, and its governmental agencies are a prerequisite to the adoption of alcohol safety countermeasures, and for the saving of thousands of American lives in years to come.

securing his cooperation in undergoing treatment for alcoholism, and limiting, but not revoking his driving privilege. This would permit him to drive, but not drink and drive.

If the action decided upon is to help the problem drinker to overcome his excessive drinking weakness, his cooperation must be gained to submit to medical treatment. If this course is accepted, the physician may prescribe a safe drug to help him to resist alcohol consumption.

For economic and physical reasons, the action taken may be to limit or revoke the abusive drinker's license to drive. It is possible that some leniency may be extended regarding the offender's disciplined drinking, but never to be followed by his personal driving. Generally, if the individual accepts a responsibility to abstain from alcohol, driver re-education programs will be made available and he may be restricted to driving to and from work during daylight hours.

# How It's Being Implemented

The Alcohol Safety Countermeasures Program is being activated as quickly as possible in states and communities which demonstrate that they are prepared to combat the problem of alcohol abuse by the drinking driver. The program is partially implemented by:

- Tangible support for state and community safety programs through matching ("fifty-fifty") grants prescribed by the Highway Safety Act of 1966. Funds available under Section 402 of this Act of Congress assist states in upgrading their highway safety programs in accordance with uniform Federal standards. It's going to take time, training of competent personnel, and the development of facilities to achieve the objective of maintaining rigid control of drivers with drinking problems.

- Research and development programs to generate improved, more effective countermeasures for community use. Basic research that clearly demonstrated the relationship of excessive drinking to soaring highway fatalities

was produced in the decade of the 1960's. This provided a basis for the introduction of more intensive countermeasures which will be improved as testing provides wider knowledge through practical application in the states and local communities.

- A public education campaign on alcohol and highway safety which points out the dimension of the alcohol safety program, and which distinguishes between social and problem drinkers. The public needs to be made aware of the magnitude of the problem and the fact that, while any drinking before driving is discouraged, direct aim is being concentrated upon an isolated group of medically sick people, not the public at large. Society has wrestled with this problem of drinking and driving for more than three generations. The countermeasures program's success depends upon concentrated, comprehensive effort aimed at the problem-drinker driver. This is based upon broad public and official support at the local community level.

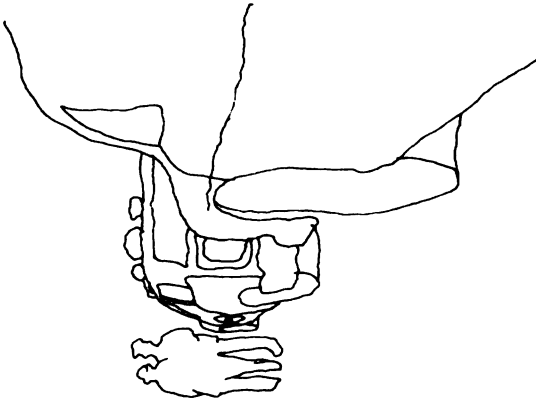
- Alcohol Safety Action Programs (A.S.A.P.) These model, community level demonstration projects for three years will be one hundred percent Federally funded to provide evidence at the community level of the feasibility of the countermeasures concept. Then the shift will be to state financial assistance on a matching arrangement. The demonstration projects also will test specific countermeasures, provide an opportunity to evaluate their effectiveness, and most important of all, begin to save lives. These programs are designed to show one of the principal ways alcohol safety countermeasures may be effectively implemented.

The A.S.A.P. efforts relate to ten basic areas. Many of the individual countermeasures to be employed are experimental and innovative. They have to be tested in the field before there are sufficient, valid data to support further application nationwide and meeting highway safety program standards.

The ten basic objectives are:

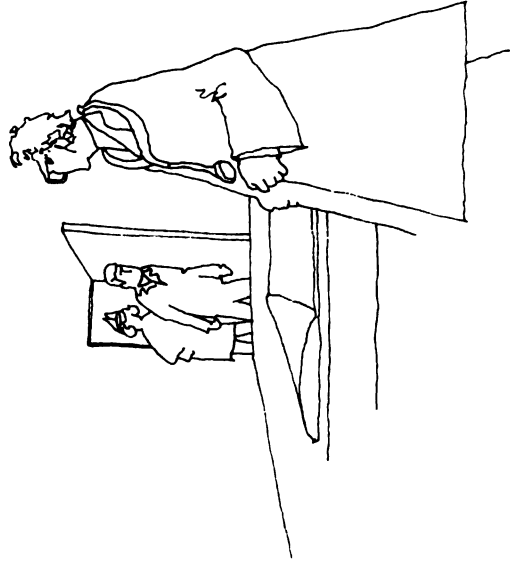
1. Official support—the initial step for a community undertaking an Alcohol Safety Action Program encourages the support of all the agencies involved in carrying out countermeasures activity.
2. Public support—the initiation of an educational campaign to gain widespread public acceptance is essential to augment official support.
3. Identification of Problem Drinker-Drivers—before they get on the road while intoxicated. The most practical method is by improving record systems so that convictions for alcohol-involved, non-traffic arrests appear on the driving record, together with records of treatment by public social and health agencies.
4. Enforcement—problem drinkers for whom no record exists must be apprehended through more intensive enforcement at the times and places where a drunk-driving offense occurs. There also must be more adequate enforcement against driving with revoked or suspended licenses.
5. Court action—following apprehension and conviction, a pre-sentence investigation should be instituted to insure objective sentencing; referral to treatment for those who need it; the use of preventive drugs under medical supervision where indicated.

6. Required Treatment—just as industrial organizations motivate employees identified as problem drinkers to take treatment under warning of dismissal, so the courts may induce convicted problem-drinking-drivers to take treatment as a prerequisite for reinstatement of their driver's license. If this option is to be available to the courts, communities must provide expanded treatment facilities. The Alcohol Safety Countermeasures Program administrators work closely with the National Institute of Mental Health, the Public Health Service, the Veterans Administration and others in the mental health area, to insure that combined efforts "dovetail" in the interest of rehabilitation of those who need it.

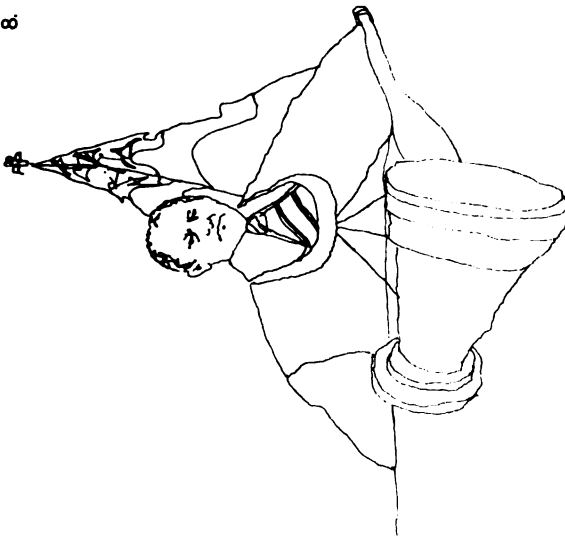


STATE	
DIVISION OF MOTOR VEHICLES	
LICENSE NO.	A7104-326089
JOHN J. JONES 21 W. FIRST ST HOMETOWN, INDIANA	
DATE OF BIRTH	6/27/32
JOC SEC ON CONTROL NO	101 002 1003
DATE LICENSE ISSUED	9/11/73
S. J. Jones	

9. **Driver Training – Driver improvement** programs operated by the courts and motor vehicle departments provide a favorable opportunity to reach problem-drinking-drivers. All too frequently, drunk-driving charges are modified to “reckless driving” or a lesser charge, and the guilty wind up in driver improvement courses rather than with a license suspension. Such courses emphasize the general aspects of driving. What’s needed is the development of special



8. **Driver Assistance – Research** indicates that problem drinkers who have their license revoked frequently continue to drive. Enforcement efforts must be intensified, but the pressure to drive can be relieved by providing the restricted individual with assistance in finding a car pool. Crisis intervention, providing a “hot line” for the individual heavy drinker to call for help from voluntary groups when his driving impairment is alcohol caused, also may reduce illegal driving. Driver assistance is a vital rehabilitation aid.



7. **Licensing Actions –** by authorities generally empowered to levy or revoke driver licenses of those unfit to operate a vehicle because of disabling illness, physical limitation or dependence upon alcohol. This disciplined use of authority must be made effective under legal safeguards. Medical review boards should determine eligibility for a driver license of every individual who shows evidence that he has a drinking problem.

indoctrination within these courses tailored for drivers with a drinking problem. Further attention is recommended for devoting greater emphasis to drinking-driving countermeasures in public and commercial school driver education programs and the relationship of alcohol's role in highway fatalities and injuries.

10. Program Evaluation – A key feature of all A.S.A.P. projects will be the surveying of experience gained from application of objectives. Provision for adequate data collection and interpretation of findings is essential if we are to determine what works and what does not.

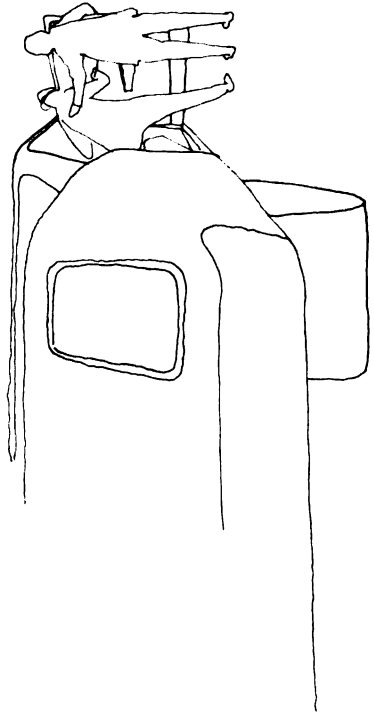
Nine A.S.A.P. initial demonstration projects were selected in widely diverse communities across the Nation. The locations were chosen on the basis of preparedness to demonstrate that lives can be saved through comprehensive support and cooperative action within the respective local communities.

Additional project applications are being studied in anticipation of funds approved by Congress, and it is contemplated that within coming months at least one demonstration project will be activated in each state.

With U. S. vehicle mileage estimates by the Administration projected to reach 1-trillion, 392 billion by 1980, countermeasures against those who drink to excess and drive must be twice as effective even to hold to present high level figures. To reduce our death rate even by half will require us to quadruple our present efforts!

Equally shocking are disabling injuries – future number incalculable – which recently were approximately two million annually – one in every 100 Americans injured every year.

Will this number increase? Yes, unless each driver makes safety his full-time obligation when using our highways.



# **AUTOMOBILE INSURANCE REFORM AND COST SAVINGS**

**WEDNESDAY, MAY 5, 1971**

**U.S. SENATE,  
COMMITTEE ON COMMERCE,  
Washington, D.C.**

The committee met, pursuant to recess, at 10:10 a.m. in room 5110, New Senate Office Building, Senator Hart presiding.

Present: Senators Hart and Cook.

Senator HART. The committee will be in order. I am delighted, and I wish more of my colleagues were here, to welcome one who has been a good personal friend and a very able trade union leader in this country, the international vice president of the United Auto Workers, Mr. Pat Greathouse.

We will order your statement printed in full in the record and, as you go along, if there are any comments you wish to add, please feel free to do so.

## **STATEMENT OF PAT GREATHOUSE, VICE PRESIDENT, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORK- ERS OF AMERICA (UAW); ACCOMPANIED BY JACK BEIDLER, LEGISLATIVE DIRECTOR**

Mr. GREATHOUSE. I am Pat Greathouse, vice president of the United Auto Workers. I am here to express our union's strong support for a national system of no-fault auto insurance.

The shortcomings of the present costly and unreliable system of auto insurance are familiar. To the average factory worker and his family, the uncertain and expensive outlays for auto insurance present a most serious budget problem.

Last week President Leonard Woodcock of the UAW told the Moss subcommittee in the House of our support for H.R. 7514, and I am here before this Senate committee this week to reaffirm our position on the pending legislation for no-fault auto insurance.

The case for no-fault auto insurance is not complicated. A few facts gleaned from the Department of Transportation's studies seem to sum up the overriding need for legislation.

1. Legal fees totaling \$600 million were paid out in 1968 amounting to 20 percent of the total income of the legal profession—just for litigation arising from auto accidents in that single year.

2. Auto insurance companies, meanwhile, repaid only one-fifth of the \$5 billion in compensable losses resulting from deaths and serious injuries caused by accidents in 1967.

3. Victims with losses greater than \$25,000 recovered only one-quarter of their loss.

4. Those with losses of less than \$500 got back four times the amount in insurance settlements.

Plainly, these circumstances call for reform.

Let me mention what this litigation does to our courts. In Wayne County, Mich., where our union headquarters is located and with which I am most familiar, 40 percent of the court litigation is concerned with auto accidents. Yet, in spite or because of this, in Wayne County a claimant must wait 4 years before his case even comes to trial. It is estimated by DOT that 17 percent of our present litigation is centered around auto accidents.

The unfairness of the present system is also illustrated by the person whose rates are raised and whose policy is canceled without notice and with no reason given. Sometimes these are impoverished people, sometimes they are the elderly, sometimes it is the young.

A system of no-fault auto insurance—setting up a national insurance system—would prevent these arbitrary actions from happening and would set up a standard premium rate for all—rich and poor, young and old.

A study by the insurance industry showed that claimants with a permanent total disability had an average total economic loss of \$78,000 but received settlements averaging \$12,556—only 16 percent of their loss. Obviously, the present system fails in this instance.

In Michigan where I live the premiums for auto liability insurance have increased 115 percent since 1962. Take-home pay for nonsupervisory and factory workers has gone up only 50 percent while nationally the auto insurance rates have climbed by 65 percent from July 1960 to July 1970. There is thus a built-in deficiency to our present system.

Aside from the unfairness of the present system, we must also look at the impact of this economic misuse of resources as it affects the whole economy.

In 1968, for instance, only \$6.6 billion was paid to claimants while \$11 billion was paid in premiums. Only 42 percent of all the money paid in premiums is paid back in benefits. How much better for families and the economy if this administrative overhead could be spent as high velocity consumer dollars for items to raise family living standards.

The no-fault concept is not new. It is working now and working well in the province of Saskatchewan, Canada. The British, for 50 years, have had a limited no-fault system. There is no indication, incidentally either in Saskatchewan or the United Kingdom, that no-fault has in any way encouraged reckless driving. But it has meant substantial savings to consumers.

The premium rates paid by British motorists are dramatically lower than in the United States. Mr. George J. Stewart, chairman of the Insurance Marketing Group, reports that when you compare premium costs for comprehensive insurance for cars in three equal price and power ranges you find the following:

The United States: Cadillac (urban), \$861 to \$1,107; Cadillac (suburban), \$353 to \$486; Chevrolet (urban), \$558 to \$767; Chevrolet (suburban), \$245 to \$357; Ford (urban), \$590 to \$767; and Ford (suburban), \$245 to \$357.

Britain: Jaguar (urban), \$240 to \$331; Jaguar (suburban), \$132 to \$208; Austin (urban), \$135 to \$175; Austin (suburban), \$72 to \$94; Rover (urban), \$214; and Rover (suburban), \$113.

As we see it, the no-fault system would provide a prompt method of reimbursement following an auto accident. We favor a system of national health insurance which would provide complete hospital and medical protection for all. The no-fault insurance would then mainly provide reimbursement for loss of income up to, in our opinion, \$36,000. The reimbursement would be immediate, not long months and years after an accident. Beyond that point we favor the right of a person to sue for negligence or pain and suffering.

We favor Senator Hart's bill which permits unions to bargain for no-fault auto insurance and we favor legislation which legalizes group auto insurance. We also favor a \$36,000 pay-out level which is in Representative Moss' bill instead of the \$30,000 limit in Senator Hart's bill.

We are not in favor of turning this over to the States. That path is too slow, too uncertain, and too full of pitfalls. It is better to pass no national legislation than to turn this back to the States. We don't drive in States. It would never happen; there would be too many delays and deficiencies in the final outcome if we go the State-by-State route.

From what we know, we are certain that national standards, a national regulating system, is inevitable. So we say: "Do not tinker with the problem by throwing it back into the laps of the States. Take care of the problem at the Federal level."

Let me sum up again our position. We ask for an end to the costly, unfair, and unreliable system of fault auto insurance and call upon the Congress to legislate a national system of no-fault auto insurance. We see this as a way to greatly reduce insurance costs to the consumer. We see it as a sure way to reimburse injured persons immediately for nearly the full loss of income.

We also favor the retention of the right of injured persons to sue for negligence, also pain and suffering beyond a limit of \$36,000.

We oppose letting the States do this and we are asking instead for Congress to set up Federal standards and Federal regulations. The savings in both money and heartache are almost beyond calculation.

There is scarcely a group in the Nation today which is not hurt by the present clumsy method of auto insurance. There are no standards, there are no rules—there are only glaring deficiencies. Billions of dollars of consumer money is poured into an unfair system.

Even Blue Cross and Blue Shield, for all their deficiencies, do pay back 95 percent of their premium money into actual benefits.

Cancellations and rising premium costs, while they hurt the poor the most, also hurt the more affluent members of society. Those who are neither poor nor affluent are robbed of income they need for life's essentials which now goes into the pockets of insurance companies and lawyers because the system requires it.

Senator Magnuson, one of the coauthors of the legislation we support here, has noted that American motorists pay \$14 billion annually for auto insurance and receive only \$7 billion in benefits, while some \$11 billion in economic losses must be covered by the \$7 billion. Consumers are getting back only 50 cents on every dollar they spend.

Besides its unfairness, we regard the present system as a great source of economic waste. The automobile is a necessity to every family. We in the UAW have campaigned for built-in safety features and, while we favor all the highway safety features advocated by the conventional safety movement, we also recognize that built-in engineering safety features must be part of the total equation which makes for safe driving.

With 85 million passenger vehicles on the road today accidents are inevitable. There is no good reason why injured people must wait months and months, hire expensive lawyers and get back a fraction of their economic loss.

The no-fault auto insurance approach puts an end to these inequities and will give millions of American auto drivers the kind of equitable treatment they have a right to expect. We do not say this is a cure-all, but we think it will help. Every legal right of the insured motorist is protected under the system we are proposing, but he may no longer be fair game for a game of legal cat and mouse.

Mr. Chairman, we support this legislation and certainly hope that it is passed by the Congress.

Senator HART. Mr. Greathouse, thank you for your testimony and for the support which you voice on behalf of your union for the proposal.

One recurring theme in that testimony I sense, is that you believe that the adoption of the no-fault program would enable us to put our auto insurance premium dollars to better use?

Mr. GREATHOUSE. That is correct. There is no question in my mind that with the need for additional safety in automobiles, the costs that will entail, that certainly we need to have a savings on the automobile insurance, both because it will give better coverage and quicker service and also allow us the additional premiums we are now paying to be used for something else.

Senator HART. One of the basic themes of those who do not share the point of view that you just voiced is that no-fault plans sort of take money from the innocent and give it to the guilty. Did you, in reaching the conclusion that you did, consider that aspect of the debate?

Mr. GREATHOUSE. We considered this, but we don't really think in the innocents and guilty that there are many people who deliberately are guilty of causing accidents. It may be people who are assessed to be at fault, but in many instances this is a happening that takes place at which there is not a deliberate fault or a deliberate guilt and, therefore, we think it is more important that the insurance company insure and pay the people rather than argue about who is responsible for the accident.

Senator HART. And as so often happens, if you are found to be 5 percent at fault, your recovery is zero.

Mr. GREATHOUSE. We have also found out in experience in a number of instances there is a trade-off by the insurance companies when in many instances, because of a deductible policy, it will claim that each one is responsible for their own damage at the present time.

Senator HART. I have said that I have never been conscious in my driving nor am I aware of any friend of mine who is conscious that he ought to stay within the speed limit or be prudent at the stop sign

because of the insurance policy problem. There is a deterrent if you have a scout car at the corner, but not the insurance matter.

Mr. GREATHOUSE. I think the only deterrent at the present time is a number of people having accidents are afraid to report damage to their insurance company for fear they will be canceled or for fear that their rates will again go up.

I think the survey is not really accurate because there are many accidents that are not reported for this simple reason, because the individual would rather pay the expense than take a chance on having his insurance canceled.

Senator HART. I will not belabor it, but over this weekend I had a reminder very close to my home that that does happen with greater frequency than most of us realize.

Very shortly after you began, Mr. Greathouse, we were joined by the very able Senator from Kentucky, Mr. Cook.

Mr. Greathouse is a fine constituent of mine.

Senator COOK. It is nice to see you, sir. I am sorry I am late. I found myself in a meeting I could almost not get out of.

I take it from what you have said here, and I have read it now, that really you are calling for a combination of no-fault and the ability of the individual to acquire insurance above the provisions that would be required under a national no-fault program; is that correct?

Mr. GREATHOUSE. That is correct.

Senator COOK. Because I notice you do favor the retention of the right of injured persons to sue for negligence and pain and suffering beyond the limit of the Moss bill in the House which is \$36,000.

Mr. GREATHOUSE. That is right.

Senator COOK. So we are talking about a combination of both, are we not?

Mr. GREATHOUSE. That is right.

Senator COOK. We are talking about a basic no-fault and the ability of the insured to acquire additional insurance, over and above that provided under a no-fault program, in the event that he may find himself sued in the courts for negligence and pain and suffering?

Mr. GREATHOUSE. That is correct. In addition to that, we are also in support of legislation providing for auto insurance as a part of collective bargaining and for group auto insurance.

Senator COOK. I hope I say this and do not get too big a smile out of my Chairman—I try not to get into too many arguments with too many people—but I notice that you say that Blue Cross on a national average pays out 95 cents on every dollar. You also added the phrase "For all their deficiencies."

Now, you wouldn't really figure that even any Federal program that we would establish on a no-fault basis could do much better than 95 cents out of every dollar paid to the claimants, do you?

Mr. GREATHOUSE. We are not talking about the 5 percent being part of the deficiencies. They have deficiencies other than administration.

Senator COOK. I know they have tremendous deficiencies in the State of Michigan because I have been studying Blue Cross-Blue Shield's program throughout the United States, and I think the program in the State of Michigan is about as recalcitrant in its ability to effectively and efficiently pay claims as almost any other State in the Union. But

I would hope that you wouldn't mean that as a carte blanche indictment of all Blue Cross-Blue Shield programs throughout other States.

Mr. GREATHOUSE. We think there are deficiencies in the program, but the deficiencies we are talking about are not in the retention for administration.

Senator COOK. Thank you, Mr. Greathouse. Nice to have you here.

Thank you, Mr. Chairman.

Senator HART. The Federal Government is the patsy—I agree with my colleague—but you know we don't do badly in retention as far as social security is concerned, and I do not want to debate either.

Senator COOK. I do not think we do if you really want to know the truth. If we can get the accurate figures out of social security I would be happy, but we cannot ever get accurate figures out.

I know they take longer to pay a claim under social security as in the State of Michigan they take to pay a claim under Blue Cross-Blue Shield, which is 20 months.

Mr. GREATHOUSE. They both do better than the auto insurance companies.

Senator COOK. I cannot argue with that.

Senator HART. Thank you very much.

Now other good things; two gentlemen whom I have met on occasion in connection with the development of this legislation and other matters, the president of the American Trial Lawyers Association, Mr. Richard Marcus, and Mr. Craig Spangenberg, chairman of the Auto Reparations Committee.

Mr. Spangenberg is a graduate of a very distinguished law school and a very distinguished alumnus of that school.

**STATEMENT OF RICHARD MARKUS, PRESIDENT, AMERICAN TRIAL LAWYERS ASSOCIATION; ACCOMPANIED BY CRAIG SPANGENBERG, CHAIRMAN, AUTO REPARATIONS COMMITTEE**

Mr. MARKUS. Mr. Chairman, if we may, we would like to have our prepared statement accepted for the record, and then we would like to summarize it orally if we may.

Senator HART. We would welcome that. The testimony will be printed in full.

Mr. MARKUS. Mr. Spangenberg will make our initial comments and I would like to make some supplemental comments.

Mr. SPANGENBERG. I speak here today, Senators, on behalf of the American Trial Lawyers Association which comprises about 25,000 lawyers whose chief interest is in representing the plaintiff.

Senator HART. May I interrupt just as we begin, to introduce Senator Moss of Utah?

Senator MOSS. I am sorry to be a little late.

Mr. SPANGENBERG. I want you to know that what we say has that built-in bias or self-interest, that we speak for the injured man in the same way that one who speaks for the insurance industry has a built-in bias, too.

I would like to start with a simple hypothetical case. A driver is on the open highway, on the right side of the road and at an appropriate speed. Approaching another driver on the wrong side of the road

comes to a curve and tries to pass, can't make it, and a head-on collision results.

This same kind of accident happens at intersections where a driver runs a stop sign or a stop light, or where there are rear end collisions, though the most serious injuries are likely to come from head-on collisions.

We will assume that both drivers are seriously injured, hospitalized, disabled for weeks or months, and consider what ought to be done for them in a perfect world. I think a very strong argument can be made that society as a whole has an interest in seeing to it that both drivers should receive full medical care, should be patched up and rehabilitated and retrained as best they can be with modern medicine, and a strong argument can also be made that an injured man and his family and dependents should not suffer deprivation or hardship due to income loss during the time they are disabled.

Most countries in the world have looked at this same problem, and I would say every major nation in the free world, has decided that this social interest in rehabilitating victims demands that they receive a kind of social insurance.

In every major nation in the free world the driver who is injured will receive full medical treatment and will receive some disability payments, enough for a living wage while he is disabled. This has nothing whatever to do with automobilers, this is part of a broad, general social approach to the problem, because the same arguments for the automobile victim apply with equal force to a man who breaks his leg falling off a ladder hanging strips, or to the recreational skier who breaks his leg on the slope, or to the housewife who falls down the stairs and breaks a leg.

There is nothing particular about automobile accidents that requires any different social treatment than any other kind of accident. So we see in all other nations there is a broad national health insurance program for all kinds of accident victims which the American Trial Lawyers Association thoroughly endorses, supports, and we think would make almost meaningless much of the Hart bill if we could get it here.

All other nations have disability insurance, but these are also State funded. I notice the previous speaker spoke about Great Britain with which I am quite familiar, and there is national health insurance, national disability insurance. So the fact the driver gets patched up doesn't mean he gets it patched up by automobile insurance. He gets patched up by other means.

The difference that we see is that all other nations in the free world have a concern for the man who is innocent and who is right, and as to the man who is in the right they say he is entitled to full compensation, not half pay or three-quarter pay but full pay.

So, in Great Britain, the driver who is right gets full compensation. He retains his traditional right to sue under the tort system of Great Britain, and he will find that the other driver carries insurance with no upper limits at all, because Great Britain doesn't believe in 10-20's or 15-30's there.

If you are insured there, you are insured without limit at fairly modest premiums, a high coverage not costing very much. Again the same is true all over the world.

In most of these countries the liability insurer on the car is required to reimburse the State for its medical pay and its disability pay or for some part of it. But the key is that they distinguish between the man who is right and the man who is wrong. The man who is wrong gets full economic restitution, but the man who is right gets complete restitution.

The deficiency we see in the Hart bill is that it gives absolutely no compensation to the completely innocent victim, the right-side-of-the-road driver, the man stopped at the stop sign. And in at least 99½ percent of all cases, you provide in the catastrophe insurance that the man will have a tort suit, but you say he will have it only if he suffers permanent disability of at least 70 percent.

I am not sure you realize what 70 percent permanent disability means, but there are well-established tables for this, validated by the American Medical Association and State compensation insurance commissioners.

And you should realize that being totally blind in one eye or losing one eye is not 70-percent disability, nor is total loss of hearing, nor amputation of one arm at the shoulder, or one leg at the hip, or both feet below the knees. Seventy percent permanent disability, which you provide for, would apply to less than three-tenths of 1 percent, so far as we can read the tables of all accident victims. And you are saying to the rest of them it doesn't matter what your loss is, you will not be paid.

Now, I do not think the American public will sit quietly by and say we will forgo our right to pain and suffering.

There are questionnaires that say they will, but pain and suffering to the average man means a physical sensation of pain. And when you turn that around and say if you are totally deaf for life, if you have one eyeball ripped out, if you have an arm amputated or a leg gone or if your spine is totally fused, all these things which are not 70-percent disability, do you think you ought to be paid for that loss? And here the public opinion polls, I address you now as political people, of course, indicate that the great majority of the American people think that the innocent victim ought to be paid for his disability if not for the physical sensation of pain.

The DOT public attitude policy done by the University of Michigan started out with a question "Are you satisfied or dissatisfied with the present system?" which includes all the deficiencies of the way the insurance industry runs the system, of course, and about 2 to 1 of the public said we are satisfied.

Now, of those who were dissatisfied, questions were put "What don't you like about it?" Forty-four percent said high cost and about 25 percent complained about ratings, cancellations, nonrenewals—2 percent said they didn't like the fault system which doesn't mean there is a great ground swell of public opinion to support the no-fault concept.

Against the idea that there may be some magic in no-fault, let me make it clear that the American Trial Lawyers Association and so far as I know all other lawyers associations, do not oppose the no-fault concept in the sense that they are opposed to a kind of insurance which pays its benefits regardless of the guilt or innocence, right or wrong or fault of the person who suffers loss.

Such insurance is commonplace today. All life insurance is, of course, no-fault insurance, and most of us carry that. In the automobile field, collision insurance and comprehensive insurance on the automobile is strictly no-fault, first-party insurance.

I know that people say if we just adopt that kind of insurance, great things will happen, but let me point out to the committee that collision insurance rates in this country have risen faster than personal injury liability insurance rates which gives no promise that no-fault by itself cuts costs.

In addition, this committee, early in its consideration of the joint resolution, heard a great deal of testimony from people who complained bitterly that they got their policies canceled because they had two side-swipe accidents in 1 year when the car was parked in public places, which means that if you have a collision insurance claim you are very likely to run into cancellation or at the least a rate surcharge for 3 years.

Again, this is typical first-party, non-fault insurance. So, it does not mean that adopting first-party, no-fault insurance makes the insurance industry behave in a better way than it has behaved up to now.

Senator HART. Mr. Spangenberg, at least you would agree that the Hart-Magnuson bill prevents cancellation and obligates them to write it?

Mr. SPANGENBERG. Yes. We are for that.

Senator HART. You are?

Mr. SPANGENBERG. We are for that. On your group sales, we are for that. If you can cut costs with group selling, fine. Any way you can cut costs is good. We would suggest a better way to cut costs on personal injury. I am sure this committee knows that the personal injury liability rate is no more than a third of the insurance premium the average driver pays.

The last time I spoke was in Arizona, so I looked up Arizona rates, and at Flagstaff, if you have the typical coverage on an automobile, personal injury liability was 16 percent of the total premium.

In Phoenix it was 28 percent. So, if you are shown figures—here are the usual insurance rates in the United States—you must understand that most of the rates you are looking at is the no-fault kind of rate, the collision and comprehensive.

Most of the money goes for sheet metal and glass, not for people. So, we do not think the Hart bill has addressed itself to two-thirds of the cost problem. The solution to that two-thirds is in the bumper bills, is in the standards for repairable automobiles with which we are all interested. And on the personal injury side the American Trial Lawyers Association has recommended to Congress that when you pass a Federal safety standard saying that a car must have a seat belt, then you should at the same time pass legislation saying drivers must wear seat belts, because the best orthopedic surgeons and the best safety men in this country insist that if all drivers used all the safety devices that are mandated to be put in the automobile, there should be no injury at collision speeds of 20 miles per hour or less and the total injury picture should be reduced in this country by 50 percent.

Again, in the same way a good bumper will reduce your collision cost, so the use of safety devices should reduce the cost of injuries by reducing the injuries themselves.

U. C. RESEARCH LIBRARY

I would like to close with one comment about what I consider an over-kill in the Hart bill. You have provided very large benefits on the disability side, and there is argument this will take a lot of cases out of court. Well, if that is your motive, I would like to point out that the Department of Transportation study showed that you can take a lot of cases out of court if your economic benefit repayment is only \$500.

Two-thirds of all claimants have economic losses of less than \$500. Indeed, when you come down to economic loss, pain and suffering and everything else, at what level are half of all claims for personal injury paid by all insurance companies in the United States, what is the half figure? Again less than \$500 pays 56 percent of all personal injury claims in the United States. So, when you get up to benefits of \$30,000 wages plus unlimited medical, you know, \$50,000 and \$60,000 of benefits in serious cases, anything left over that is about two-tenths of one percent, we figure.

The number of cases that would be removed from the system with very modest payments of medical and economic loss we think would cure the ills of congestion, though to cure congestion we have got to have a no-fault felony bill, too.

If you can just say there is no penalty for stealing less than \$5,000 and no penalty for any assault less than murder, we can release perhaps half our judges that are now on the criminal side over to the civil side. I don't say I advocate it.

I am making the point that most court congestion is caused by the criminal dockets in the United States, and there are many studies to prove that. Again court congestion is not really a reason to destroy the rights of innocent people.

What we see in the Hart bill is not a change of the insurance system but rather a violent and revolutionary change in the rights of individual people to be treated as individuals and to have their losses fully paid on those occasions when they are completely in the right.

May I turn the microphone now over to Mr. Markus?

Mr. MARKUS. Senator Hart, as has been already suggested by Mr. Spangenberg, our position is substantially that this bill does not go far enough in providing no-fault protection and goes much too far in providing no payment protection.

In other words, this bill, as it is now drafted, is an attempt to protect the economic loss of a relatively small fragment of the population who are entitled to protection in a way which frankly we think will be a bonanza to the insurance industry.

We think, as it is now drafted, this legislation can and will be the bounty at the end of the rainbow for every insurer in the United States. We must tell the committee of our concern of this nature.

Senator HART. You ought to tell them first. Maybe we can get some support for the bill out of them.

Mr. MARKUS. Since you say that, maybe we should make it clear, I don't think the insurers are opposed to this concept. To be very candid, they are in favor of getting this concept at the State level where they have greater control over the State legislatures and the State insurance commissioners.

They are afraid of anything with the word "Federal" in it, and they are afraid that there is a real problem with the word "Federal" in it.

As far as the profitability, I think most of them can see from the Massachusetts experience that this is a bonanza.

Let me, if I may, consider the material that is contained on pages 12 and thereafter in our prepared statement and talk to you about some specific problems we think exist with the present legislation.

Mr. Spangenberg has already described our problems with section 2(9), which is the definition given to catastrophic harm, and I suggest to the chairman and to the committee that, if they would refer to such standard texts as the Journal of the American Medical Association cited by us, the U.S. Bureau of Labor Statistics, cited by us, and other standard texts in this field, I think they, too, would be shocked to find what the standard of 70-percent permanent partial disability means.

It is such a totally grievous loss that it would be, I think, far beyond what the committee contemplates. I think it is also interesting to note that what was an ambiguity in the former language of the act has been resolved but in a direction that I could never have anticipated.

The former language indicated that if there was economic loss beyond that which was provided by the policy prescribed in the statute, it was unclear whether that would be recoverable in a tort action. The present language leaves no question whatever, that if there is an economic loss by the innocent victim of money out of his pocket which is not compensated for out of this first party protection, he will not receive repayment of that in a tort remedy unless he can show this 70-percent permanent partial disability as well.

And I think also, with all respect, that is shocking.

Turning then to the definition that is used for disfigurement, it describes disfigurement as compensable if there is permanent severe and irreparable disfigurement. Those of us who have had occasion to work with claimants who have had serious disfigurement and who have seen them go through 20 to 30 surgical operations cannot help but wonder whether they will be deprived of any compensation, if at the end of this whole picture of misery and anguish it is said by some court that the condition is no longer—after all of this—irreparable, that it is no longer severely disfiguring.

Section 8(10) (C) talks about economic loss and describes what types of economic loss will be reimbursable.

Again I think that the committee may not have thought of some of these considerations and I offer them in a genuine effort to be helpful. The provision is that 85 percent of the economic loss will be reimbursed, that is 85 percent of the wage loss will be reimbursed. I presume that this is suggested on the theory that 15 percent represents income taxes that are not to be paid and are not charged against this sum.

As a practical matter, an ordinary person who has a wife and three children, taking the standard deduction, is not obliged to pay 15 percent of his total income as Federal income tax unless he earns at least \$18,000 a year.

So, for the overwhelming majority of the population, and particularly for the lower income groups, this is a drastic reduction. People whose every penny is a determination of whether they will have something to eat at the next meal will have that penny and that meal taken away under this provision, though they were totally innocent.

There is no payment, no provision for payment that extends beyond 30 months in the bill that Senator Hart has presented or in the 36 months in the bill that Congressman Moss has presented.

I point out to you that though this may sound like it covers every situation, because almost no people, certainly a very, very small percentage of the people, have wage loss that extends beyond those periods of time, the fact of the matter is, however, that the language as it is now written means that if there is disability that extends after that period of time, there is no compensation for it.

I suggest we think about the situation in which a man is injured, returns to work after a period of 6 months, and 2 years later is required to have extensive hospitalization and disability; he will receive nothing for his later lost wages under those circumstances.

Again I think this is not what the committee intends.

In this respect and in regard to the payment for permanent partial disability, this bill provides much less protection than any workman's compensation statute in the United States to the best of our knowledge.

Perhaps the most disturbing part of the language with reference to economic loss, however, is the use of a standard for measuring the wage loss as the date of the injury and as the income at that date.

In other words, whatever income the person is earning at the time of injury is his frozen rate under the language as I read it in the statute now. This means that the fellow who is between jobs, that the student, that the housewife, would presumably receive no compensation whatever for their lost earning capacity, that future earning which they would most likely have obtained, under the present language of the bill.

As it is presently drafted, the bill describes that there will be payment of the first party benefits as excess above other public and private insurance plans, but then provides that this isn't necessarily so if these other plans expressly state that the auto insurance described here will be primary and the other plans will be excess. I suggest to the committee these very significant meanings.

First, during the interval in which the policy prescribed by this statute rides on top of other insurance, we will have an illusory cost-savings simply by shifting the cost to another area. That cost saving will disappear fairly soon, because the other policies will find out and push it back onto auto insurance.

That is not very hard with this language. Indeed with this language, they could except themselves from coverage where there is an accident involving an automobile. But during that interval, people will be in effect paying double coverage. They will be paying for both types of coverage and they will be receiving only one.

Though we recognize the problems in double coverage, they are certainly not as disturbing as having people pay for both, so the insurer can receive double profit, and pay only one back.

I think the other problem that is lurking beneath the surface relates to the national health insurance industry. We have every reason to believe that the health insurance industry is going to be quite anxious to say that this automobile insurance, this junior national health insurance bill, if you will, will be primary, and that the national health insurance payment, if any, will be secondary and above it, so that they can hold on to their share of profits for this part of the market.

I want you to recognize what is here so that we don't do this blindly, if that is not what is really intended.

We also know that the overwhelming preponderance of economic loss is medical expense, and we think that there is serious doubt as to the need or wisdom for legislation of this type if there is a comprehensive national health insurance program. We do recognize that this still leaves wage losses as something which should be taken care of, and we are proposing in every State legislature that will give us an ear that there be temporary disability insurance laws similar to those that now exist in California, New Jersey, New York, and elsewhere.

I think, finally, the only other two comments that I would like to make with reference to the specific language are first that you have made the liability insurance that you provide optional. You have also prohibited any State from requiring liability insurance either by compulsory insurance or financial responsible laws.

As a practical matter, this means that your payment for even catastrophic harm will be illusory in most cases since there will be no compulsion of any kind whatever to force people to carry any liability insurance against that.

I suggest that you should consider the wisdom of making that coverage mandatory as well as the other coverage.

Finally, I wish to bring to your attention I think a really serious problem, and that is the last thing I discussed. Much discussion has been given by the populous about the poverty areas of our communities. Right now, we know that poverty areas have serious problems with automobile insurance. It is my firm belief that this legislation will increase those problems manifold. Typically the poverty areas contain people who are avoiding buying automobile insurance of any kind even in compulsory insurance States where they are required to do so by law. They don't have the money to buy the insurance so they find any method they can to drive that car without the insurance.

I am not pleased with that situation, but at least I can recognize it. This law will mean that they have no first-party protection and they have no third-party protection. They have no protection at all.

Now, although I can feel some concern that these are people who are violating the law, I have much less antagonism to the people who are violating the law because they are forced to by economic necessity than for the wealthy man who is in a hurry and has to go through a red light and who is given special consideration by this legislation.

Senator HART. What if he is a smoker and I am not a smoker, why is it consistent to support national health to pay the man who inflicts his own damage and yet raise such hell about the rich man going through the lights?

Mr. MARKUS. Because that is supported by a general tax funding. That is not supported by saying only the healthy people—

Senator HART. It sure comes out of my taxes. If I am a nonsmoker—I don't want to put Kentucky on edge—

Mr. MARKUS. If you give me the opportunity, I think I can explain why it is compelling and I think your example is an excellent one. As a nonsmoker and a smoker you are each contributing equally toward the potential risk of many, many diseases and injuries. As a motorist who is the one at fault, you are receiving benefits that you do not now receive and as one who is not at fault, you are giving up the benefits in order to pay for them.

Senator HART. One is a private health insurance program, the other is a national health program. You call no-fault in your prepared testimony a victim tax, but Federal taxation that covers smokers with funds from nonsmokers is all right.

Mr. MARKUS. That is a general tax. One is progressive—

Senator HART. It is money from the nonsmoker and not money from the safe driver?

Mr. MARKUS. The safe driver will contribute along with everybody else equally, not lose an overwhelming preponderance of his present benefits. Under the present system, liability system, he receives about \$30 for every dollar he pays into automobile liability insurance as the average payment out of—

Senator HART. But if it is a health program, the chances are that those fellows are giving more.

Mr. MARKUS. I don't understand, Senator.

Senator HART. Conceivably it would be based on a progressive tax structure.

Mr. MARKUS. I don't know, but I assume it will be a progressive tax structure, yes.

Senator HART. I assume that the wealthy nonsmoker will make more than the smoker.

Mr. SPANGENBERG. We may be in agreement.

Certainly we would have no objection to a national health program, nor national disability program, and the State disability programs that pay out to bad drivers their medical and their disability, and, of course, everyone would support the payment to bad drivers, good and bad.

Senator HART. Maybe we are hung-up on the use of some pretty emotionally charged labels.

Mr. MARKUS. Like no-fault.

Mr. SPANGENBERG. This is because of the broad social interest in rehabilitating victims, including foolish men like myself who smoke, although my doctor tells me if I didn't I might go crackers and psychiatric care costs much more than any other kind of care.

Senator HART. If you don't cross with the light, you may get hit on the curb anyway.

Mr. SPANGENBERG. Yes. Understand, we are not opposing no-fault benefits as such. I do seriously question, Senator Hart—I think our statement is consistent with that—I seriously—

Senator HART. Then don't call it a victim-like tax.

Mr. SPANGENBERG. The victim tax is when you say in order to keep the premium down we will not let the innocent victim recover full compensation. That is the tax. To the extent that you diminish the right to full compensation—

Senator HART. But there aren't any intangible benefits provided in a national health care program either.

Mr. SPANGENBERG. Certainly not.

Mr. MARKUS. It is not what it is for.

Mr. SPANGENBERG. My argument was based on West Germany, Sweden, Norway, Spain, Great Britain, Ontario, Saskatchewan—these I know about because I had the privilege recently of chairing an international symposium in Spain on auto reparations—everyone says we pay health care, we pay disability to every accident victim, but we pay

it out of a State fund because we have found it is much cheaper to do that way than through compulsory private insurance. In the same way we pay social security out of a government tax fund because it is cheaper. We wouldn't think of having a compulsory private insurance company retirement benefit program which every wage earner had to buy.

But they say beyond that the innocent victim, the man who is in the right will get full compensation. If he gets a busted arm, he will get some payment for the fact that he has a broken arm or if he loses one he gets it for that. He gets that in the traditional tort way, and the opposing driver must carry liability insurance and the amount they carry is far higher than anything we see.

In West Germany 68,000 U.S. dollars is the mark translation of the minimum, Great Britain, absolutely unlimited, Ontario, 35, and they are considering putting it up to 50, where we stagger along here thinking that 10-20 is pretty good insurance.

There have been comments that the man who has heavy losses doesn't recover under our present system.

Senator HART. Comments?

That is a fact; isn't it?

Mr. SPANGENBERG. Sure, because your liability limits are too low. The other countries said the way to cure that is to increase your liability limits. It doesn't cost that much more.

As you know, the difference between carrying 100-300 and 25-50 is a couple of dollars a year. There are other ways to reach this same result. I think we could just put that in a capsule form. We are not concerned with how many benefits you give everybody. We are only concerned with what do you take away from the man who is completely right.

Senator HART. We are in agreement that the existing system fails dramatically to respond to what you are talking about?

Mr. MARKUS. Yes. The social security system is inadequate, I agree with you.

Senator HART. I am talking about the existing automobile insurance programs where, and I think the facts are accepted—

Mr. SPANGENBERG. It doesn't fail as bad as the Hart bill.

Senator HART. Let me put it this way.

The average total economic loss for claimants totally disabled runs about \$78,000, but the actual set limits run less than \$13,000—16 percent of the loss. Are we in agreement that that system should be corrected?

Mr. MARKUS. First, I think your information can be modified somewhat. Again, from the Department of Transportation studies, of all—

Senator HART. That is where it is from.

Mr. MARKUS. I agree. Of all of the claimants who made claims and who received any money at all from the tort liability system, 97 percent received as much or more than their economic loss.

Now, we are talking about in the figures you are giving us, we are talking about the fact that there are many people who are not eligible for any money out of the tort liability system, and they therefore, necessarily will dilute those numbers drastically. Those people are people that should be protected by the social security system, and your data is a condemnation of the fact that our society has not given proper attention to people who fall down steps, who get cancer, or who are foolish drivers and go through red lights or go crashing into trees.

Senator HART. That is what we are looking at now.

Mr. MARKUS. Respectfully, that is not what we are looking at.

Senator HART. Not in this committee. The national health program is not in this committee.

Mr. MARKUS. We are with you there.

Senator HART. But two facts that are pretty stark and that cry out for correction, as I see it, and I sense that you do, too, are first, the woeful inadequate return to the disabled man now under the tort system, and you gave me a figure—I forget what percentage, a high percentage gets more than four times their economic loss—minor claimants under the present system are compensated four times more.

The fellow who really gets stuck with a bad disability is undercompensated even more.

Mr. SPANGENBERG. Please, this is true but please don't get hung up on this overcompensated four times. You are not talking about many dollars first.

Senator HART. Not talking about what?

Mr. SPANGENBERG. Many dollars.

Senator HART. We are talking about a lot of people, though.

Mr. SPANGENBERG. The man who has \$150 in wage loss or \$100 in wage loss and medical bills may go back to work and work with a sore back for weeks, but he gets more out of working, and he wants to keep his job. The statistics of DOT is that if he settled for less than \$500 he might get four times as much as his direct economic loss.

This was only 7.8 percent of all the dollars paid out in the system. So, my point is—

Senator HART. Ninety percent of the system's time was involved because that represents about 90 percent of the claims.

Mr. SPANGENBERG. A lot of adjustment claims. You are still going to have a lot of adjustment claims under your system, you understand. Not many of these claims go to a lawyer, not many go to court. These are the claims settled by the adjuster so that they don't go through a lawsuit.

Aren't there other ways to cure that without saying to a college student, if I may use that example, who gets his arm torn off, and I had one of those cases, a sideswipe, a boy suffered a traumatic amputation of the arm—this fellow carried Blue Cross and was driving—under your bill the insurance company pays him nothing.

Blue Cross paid all his hospital, Blue Shield paid all his medical. Your bill is excess. He was a college student so he had no wage loss. He would get nothing under your bill. He lost his arm with traumatic amputation for life. He gets nothing under your bill because he isn't 70 percent disabled.

Senator HART. On that point, I am advised that the Trial Lawyers Association has suggested language in communication with committee staff modifying the definition in order to respond to this problem. and I would ask you if either of you happen to be familiar with it.

Mr. MARKUS. I am familiar with the language, Senator.

Senator HART. Can you explain generally what would be achieved by the adoption of this language?

Mr. MARKUS. In our discussions with your staff, we attempted to explore what we thought were some rather drastic provisions in the bill. Even in the former language of the bill which described that

there would be payment for human losses or general damages only if there was permanent loss or loss of use of any bodily function or member. We pointed out the standard of permanency is an unreasonably great standard. You are, in fact, still doing an overkill: We thought if there were a standard that said that the disability extended for some reasonable period of time, and we suggested 14 consecutive days, that this would eliminate a very substantial portion of the really trivial cases but would still keep a meritorious claim alive.

Senator HART. You suggest the use of "compensable" instead of "catastrophic."

Mr. MARKUS. Let me explain if I may.

Senator HART. Let me read it for the record so the reader of the record will get a better understanding. Your suggested language is:

The term "compensable harm" means a bodily injury, including death, at any time resulting therefrom which results in a partial or total loss of, or loss of use of, a bodily member or a bodily function if such loss, or loss of use, extends for at least 14 consecutive days at any time after such injury.

What does that mean? What do you reach there?

Mr. MARKUS. First, let me explain why I suggested to your staff that you not use the words "catastrophic harm" and instead use the words "compensable harm." You earlier commented on what you felt was emotionally charged language in our statement.

I commented that the word "no-fault" was an emotionally charged word. If lawyers are going to be going into court to make claims and the Federal Government says this is a catastrophic harm, I think it is obvious there is going to be a larger verdict than probably is reasonable.

I represent the claimant, and I must say that is not fair. So I try to tone down and take out the colorful language by suggesting that you call it compensable harm instead, which is really what you are talking about regardless of what language is chosen.

I then try to approach the question that I think you are seeking to answer. That is, where is the standard that will realistically eliminate trivial cases and still keep a right to compensation for the human losses of disability, periods of intractable pain, and a real unhappiness in a substantial matter?

That is a difficult line to draw, I recognize it is a difficult line to draw, and I am sure that you and your staff have struggled with that a long time. Frankly, I was astounded when I saw that you came up with 70 percent permanent partial disability. That to me is not drawing a line at all. It is saying don't bother with it.

From our experience, from our study of the DOT studies, from our evaluation of this whole picture, several of us who are in the leadership of this association talked about this, and we tried to reach a conclusion as to what we thought might be a meaningful standard that would be possible, and we arrived at the one that is described here.

Mr. SPANGENBERG. May I give you a quick for instance?

One of my pending cases, where fortunately the tortfeasor was a large well-insured truck company, involves a young fellow who entered into a partnership with a friend to paint stripes on a highway. They were going down the highway, they had set out red lights and 5 miles of yellow markers behind them.

A truck driver apparently hypnotized by the road drove right down the five miles of markers and ran right over the whole painting truck.

That young man has been in and out of hospitals for over 3½ years trying to get put back together. The doctors now think they have secured the osteomyelitis which he had developed or have it quiescent, you never cure it, but they have gotten him put together quite well. He can now walk, he has gone back to work.

I do not think that you could say he has any permanent loss of function. He will get it again if the osteo flares up. But I point out to you that this man has had over a year in total hospital days, he has been totally unable to enjoy life at all or to perform the kinds of things that young men like to perform.

I think he is entitled to compensation for that temporary disability that went on for 3½ years. Where you have drawn the line before he gets well, I don't know. The same thing with your standard on irreparable plastic surgery. I had one client who went through 26 different surgical procedures to finally get a face put back together.

After 5 years she had a passable face. But wasn't she entitled to some compensation, again a woman who was completely in the right, for this dreadful period of time when she couldn't even go out of the house and didn't dare see her friends because her face looked so awful.

It was temporary and finally repaired.

But coming back to what other countries have done, I say I think the United States should have as much concern for individual rights, for the right of the free man to go about his business and play golf and bowl and go out with the boys to the bar drinking and ski or fish or whatever he likes to do. This is a valuable right, we think it is. We say we are free men, we can do these things, and if someone wrongfully takes those rights away, since our country was founded, we have said they should be paid for.

Every other free nation in the world pays for those things. They say they think their citizens' individual lives have value, and we view a bill that says there is no value to that at all in this country today, we think does not reflect the fate of the American people.

Senator HART. If that fellow that you are talking about had not had the good fortune to turn to you, given these figures that the DOT gives us, that poor fellow, forgetting whatever dollar sign you put on the joy of playing golf, he wouldn't have gotten more than a third of his economic loss.

Mr. SPANGENBERG. Not so. He carried Blue Cross, he carried Blue Shield, he had catastrophe medical insurance. He was already carrying first party.

Senator HART. You make him sound as though he was lucky.

Mr. SPANGENBERG. Eighty-five percent of the population now carry their own private health insurance, all of which you will put in underneath—

Senator HART. You are talking now about the intangible losses. We are trying to find a line to draw.

Mr. MARKUS. In the example that Mr. Spangenberg gave, that man was the innocent, and did have a tort claim and could and did recover—I don't know whether the case has been concluded, but certainly could recover not the low percent you have described, which takes into account all those people who couldn't recover.

That includes those who had no right to recover, those who were drunk and ran into a tree.

Senator HART. I don't know how many we find in this average of the totally disabled—we are told that they have an average total economic loss of \$78,000 and their insurance settlement averaged \$12,500, 16 percent of the loss. How many were drunk? How many were innocent bystanders? All of us can agree this is wretched.

Mr. SPANGENBERG. Again, Senator, no quarrel, no quarrel with the benefits you give the driver, whether he is right or wrong, no quarrel with that phase of the Hart bill. I don't mean to pretend that your bill gives him any benefits. It really doesn't.

It compels him to buy health and accident insurance from a private insurance company and then he will get the benefits from the insurance he has bought.

But again no quarrel with that. I am trying to address myself to the fact that in order to make this premium—total premium cost somewhat less—I assume that is the motive for it, you say we will not pay the innocent man full compensation.

Now, in this way I think you penalize a man who has a right to recover. You change the legal system completely, and you do it for what reason?

To make the cost lower for the fellow who is wrong.

Senator HART. To do something about this raw figure that I gave you is why we do it, but I think you and we together are trying to find the language that will take care of the intangibles of the innocent.

Mr. MARKUS. All right. I think that is a good goal.

Senator HART. Your own language draws a line so as to bar some of it, ours bars more of it. Together maybe we can find out a line that is appropriate.

Mr. SPANGENBERG. Your language bars about 99 $\frac{2}{3}$  percent of it.

Senator HART. I wouldn't put a percentage on what yours bars.

Mr. SPANGENBERG. Probably 50 to 60 percent, which we thought was enough to get the junk cases out of the system.

Senator HART. We will see if we can develop how much ours bars, but I have imposed on my colleagues.

Senator Moss.

Senator Moss. Did you participate in the hearings on the House side?

Mr. SPANGENBERG. I did not.

Mr. MARKUS. I did.

Senator Moss. I understood that a lot of the language problems have been gone over there and the bill has been somewhat revised on that side. Is that correct?

Mr. MARKUS. There have been some changes made in the House bill. None of them I think are germane to the subjects we are talking about here. The most dramatic one that I saw, and I again feel I must be candid, is the removal of the higher rating for commercial vehicles so that they would be charged at a rate that would be, under the House bill form, the same as passenger vehicles.

This, of course, is a tremendous subsidy to the bus and trucking industry and means that everybody else will have to pay higher premiums. I frankly cannot approve of that approach.

Senator Moss. The figures indicate that there are a great many who are not able to get compensation at all under the present system. So, isn't the real focus of this bill to see that everybody connected in an automobile accident at least gets his medical care?

Mr. MARKUS. Again, Senator Moss, that part of the focus gives us no trouble. It is the focus which says in order to pay for this we are not going to take it out of the general tax dollar, we are going to take it out of the innocent victim and reduce his benefits which we think are deserved. That's our problem.

Indeed, if the Senate were ready now to pass this bill and delete from it section 4 completely, we cannot philosophically disagree with it.

Senator MOSS. But section 4 would have to go?

Mr. MARKUS. Section 4 is the method of paying for it. We say that method of paying for it is morally wrong.

Senator MOSS. We now have, in fact I guess every State has, a requirement of carrying liability insurance for an automobile driver.

Mr. SPANGENBERG. I think only three States make it really compulsory.

Mr. MARKUS. In some form or another there is some type of coercion or direction.

Senator MOSS. I recognize there is variation among the States, but there is some requirement that way. Yet at the same time automobile drivers are having difficulties obtaining insurance. Some of them are getting canceled out and so on. They are having all kinds of troubles.

Mr. MARKUS. Senator MOSS, I think that is an excellent point. This bill does in part deal with some of those problems. As to those we think it is a very creditable effort, and we have been asking in State legislatures for very similar legislation, and we think it is a fine thing, that there be some method of curtailing really wrong underwriting practices and wrong cancellations practices.

This bill frankly doesn't go far enough in that direction. There is still ability of the insurer to use a system which has 10,000 rates, a whole variety of categories of rates. It is left up to the Department of Transportation to decide which categories are acceptable, and there is really little guideline in telling them how many categories will be acceptable.

So, I am concerned that it doesn't go far enough in that direction. But that is not what our problem is. That is not the objection we raise. Your objection is the one that I think the public is raising, that automobile insurance—first party no-fault insurance, if you will—is unmanageable, because the companies are canceling first party no-fault insurance, collision insurance—the companies are canceling, they are making weird underwriting rate structures, they are not conducting themselves in a meaningful or helpful manner for the public in first party no-fault insurance.

Mr. SPANGENBERG. I cannot buy medical insurance in my State at anything like the limits I would like to carry for the benefit of my guest passengers or myself if I were one of those guests.

Senator MOSS. Thank you very much.

Senator HART. Senator Cook?

Senator COOK. Mr. Markus, you said in your remarks when you were reviewing the sections that in your analysis, you point up some of the glaring deficiencies that the committee has not taken into consideration.

I want to make it clear to you this is not a committee bill, that we are here for the purpose of hearing and discussing, and trying to find

out whether a bill should be brought out, and what kind of a bill should be brought out. I must say to you the only thing that bothers me about both of your statements is that it would have been a lot better to speak from the standpoint of the ability of an individual to preserve his right of tort liability, even his constitutional right to recover, rather than to have compromised yourself by saying the real solution is to increase social security and to have a national health insurance program.

I must confess to you that it bothers me. In making reference to the fact that social security benefits, as you put them, Mr. Markus, are too low, and that the Congress should continue to increase them, you imply conversely Congress should continue to increase the tax. Thus you are saying that the Federal Government should reinvent the wheel by establishing a comprehensive national health insurance program so that we can save the right of tort liability on the part of somebody who is injured in automobile accidents.

I think some of the things you bring out are very important, and I would like to compliment you, for instance, in showing some of the deficiencies. Some of the deficiencies are in the field of payment and of loss of wages. There is the fact that this bill completely ignores the loss caused by an injury to a wife, for which there is no compensation under S. 945. There can be none because she is not a wage earner, and there is no way to establish that she is a wage earner, and therefore all of this loss goes down the drain.

I assume the husband would be unable to seek compensation under S. 945, even if he had to hire all kinds of services to take care of his family and his children while his wife was completely and thoroughly inundated in a serious situation.

I think your reference to 3(b), where it forbids a State to require liability insurance, would convince the insured under a no-fault program that he is now carried, and he need not carry any additional coverage.

If you get into an accident with somebody who is not of major standing in the community, you might settle a case. If he is in a major position in the community, he might find himself in Federal court. Therefore, he would still have to continue to carry a tremendous amount of liability coverage over and above any no-fault coverage, because he would find himself by some hook or by crook back in the Federal court, when he thought he was going to be excluded by having a no-fault program.

I think it would have been much better, frankly, to have talked about these things. Rather, you say we should hang on to the ability to go into court for the benefit of tort liability for an injured individual, and that we can satisfy all these things by increasing social security and having a national health program.

MR. SPANGENBERG. This is in response to arguments that have been flooded upon us by people who say as a social measure, as a welfare measure, we must pay the medical bills, the loss in wages of the fool who leaves the curb and wraps his car around a tree.

In the serious injury cases, remember, a third of all serious injury cases are single car collisions. That is a social argument, isn't it?

Senator Cook. I think it is.

MR. SPANGENBERG. So, we said if you are persuaded by that social argument that you must take care of the single car victim and the fel-

low who is passing in the no-passing zone and so forth, that same argument means you have got to take care of the man who is injured when he is taking down his screens, and so forth.

If that is your approach, the social approach, then we say go all the way.

Senator COOK. If we are going to have a national health insurance program, and the estimated cost after the third year is \$77 billion the consumer is going to find some type of tax that he is going to pay and it is going to be substantial, and it is going to deprive him of having the kind of health insurance that he wants.

Maybe he wants health insurance, when he is in the hospital that will pay a thousand dollars a month, so that he can keep his wife and four or five children at home when he is not being paid and he is in the hospital for an automobile accident.

Mr. MARKUS. Perhaps I could make some additional clarification. Really I think it is a question that these are difficult policy judgments that everyone must make and certainly the Senate must make. If you feel that there should be social legislation that tends to solve that type of problem, other than letting each individual buy the insurance which he thinks is most proper for him, then we suggest that you should do so, but you should not use this automobile insurance system as the excuse.

Senator COOK. I think the only criticism I am going to make today, Mr. Chairman, relative to this, is that it may be all right to be for a national health insurance program and not for no-fault, because there are fewer cases that we can have in court that deal with problems that are not involved in automobile accidents.

Maybe that is why we should say it is all right to have a national health insurance program and not no-fault.

Do you see serious constitutional questions in this approach?

Mr. MARKUS. I do. I might say I have just finished writing an amicus curiae brief relating to the Massachusetts statute. I have very serious doubts—that statute is not as drastic as this—but here are due process considerations that are very real here, and equal protection decisions that are very real.

As it is now drafted, I read this as being an invidious discrimination against the poor. I know that is not the intent of it, but I believe it exists under the legislation as it now exists.

Mr. SPANGENBERG. This bill would override the Ohio constitution's right to sue and recover which is covered in the 1912 Ohio constitution.

Senator COOK. I wonder if the staff might make some analysis of all constitutions in that regard.

Mr. SUTCLIFFE. The Department of Transportation study has addressed this question, and we have also requested the individual who did the work, on what State constitutions will have to be modified to provide the committee with that information.

So it will be available shortly.

Senator COOK. Having been a member of a State legislature, it is not going to be easy for State legislatures to modify their constitutions. For instance, in the State of Kentucky, it has to be presented to the State senate and house, and then be presented to the people in a referendum. This is going to be a very difficult thing to do.

Would you mind, because I would consider it a privilege to have it as a part of the record, submitting a copy of the brief that you submitted in the Massachusetts case?<sup>1</sup>

Mr. MARKUS. I would be most privileged.

Senator COOK. Other than this brief, what is your reaction to the Massachusetts experience? We had a gentleman who testified for and on behalf of the Governor of Massachusetts, who said that he considers this program a success on its 3 months' history.

I would like to have your comments.

Mr. SPANGENBERG. I am so happy that you asked me about Massachusetts.

May I say first, Massachusetts can be no test for the rest of the United States, and I can document that. The Department of Transportation publishes once a year a highway accident data book in which it lists all accidents, for all States, and those figures for 1968 show 13,600,000 accidents.

Only 1,600,000 produced any injury. If it did produce an injury, it averaged 1.7 injuries. So there were 2.6 million injuries out of 13,600,000 accidents.

In the same period in Massachusetts, the same year, 6 months' study, 144,000 accidents, 155,000 injuries. In other words, Massachusetts was having an injury rate seven to eight times greater than anywhere else in the United States. That curiosity lead me to investigate why should that be so in Massachusetts.

The only explanation I can give you is that Massachusetts had compulsory PI, personal injury liability insurance, no compulsory property liability insurance or property damage coverage or collision coverage.

I think what was happening was that in the Massachusetts fender benders on the Boston freeways, which are terribly designed, people were getting out and complaining about an injury to a neck that really translated into "fix my fender."

As soon as you go into compulsory property damage liability, as they now have in Massachusetts, those figures have to reverse. I would expect Massachusetts now will come down to the normal rate. They haven't quite gotten there yet, because the population isn't retrained yet. But there has to be a tremendous decrease in personal injury claims in Massachusetts because they started out eight times higher than they had any right to be.

But I would also point out that while in Massachusetts they decreased the PI liability insurance rate by 15 percent under legislative mandate, they at the same time increased the collision damage rate by 37 percent. So, there is no overall premium saving.

Again fenders and glass cost more than people in our insurance system. So, the insurance company can easily tailor a rate and say we will charge less for PI if we can charge more for property, which has happened in Massachusetts.

For that reason, I can't draw any valid conclusions from any result that happens in Massachusetts because they started out as a completely abnormal State, and what happens now may get them back to something different for Massachusetts, but would have no relevance for

<sup>1</sup> See p. 682.

Arizona or Montana or Ohio or Michigan where the injury claim rate is much more in line with national levels—where our personal injury liability rates are really very low and a very small part of the premium.

Mr. MARKUS. If I can supplement that by saying, to the extent you draw any conclusion at all from the Massachusetts experience, it has to be a condemnation, because according to the data that has been released for the first 3 months, they are paying half as many people as they paid for the previous year.

If a no-fault proposal is one that is supposed to make sure that those who are not now entitled to compensation receive some compensation, they are apparently failing miserably in Massachusetts since they are paying 50 percent less people.

Frankly, I think the reason they are paying 50 percent less people is the reason that Mr. Spangenberg has already outlined, that what were previously personal injury claims are now property damage claims. If you are going to draw any conclusion, it has been a failure for the public and a great bonanza for the insurance companies because, as the Governor pointed out, the companies are making a tremendous profit and keeping it.

Senator COOK. Let's get down to section 4 which you were discussing with Senator Moss and Senator Hart. Under our present system, I expect that almost every State in the Union has definitions of what we refer to as catastrophic harm. Maybe some do not. At least if they have it nowhere else they have it as a matter of case law.

Where do we find a standard for the phrase "catastrophic harm?" Does this revert to State law or Federal law? How do we make this interpretation? Where do we get it from?

Mr. SPANGENBERG. There is no standard anywhere in the world. There is no standard in any State of the United States. There is no other place in the world that takes away the right of a man to recover unless he has come up to some defined level of injury.

In the workmen's compensation field—

Senator COOK. That is where we come the closest, isn't it?

Mr. SPANGENBERG. Yes, but it is just any partial disability.

Senator COOK. But this is all done at the State level?

Mr. SPANGENBERG. It is just any partial disability.

Senator COOK. My point is, as far as the liability aspect of catastrophic harm, where do we make this determination of what it is, at the State level or at the Federal level? I am at a loss in reading section 4, and I just wonder how you would interpret it.

Mr. SPANGENBERG. I was raised in New England. Can I answer a question with a question like a good Yankee does? Why should you define catastrophic harm? Why should the man who was half destroyed get nothing and the man who was three-quarters destroyed get something?

Where do you draw the line of saying that a man who has disability shouldn't get paid?

Senator COOK. I am not arguing with you, because I have trouble with section 4, and I have trouble trying to figure out how to make a determination that, if, in fact, a suit is filed, what type of definition, at what level, would it be a federally created definition? I don't know.

Mr. MARKUS. Let me try and answer that, if I may. I think there are really two questions implicit in what you are saying.

The first is what is the standard for determining whether there is a right to bring an action, whether it is called compensable harm or catastrophic harm, and I suspect that that would be the standard that is placed in the statute itself. It seems to me that that is where that is being defined.

The second question, however, that is in the background, is what law governs the liability issue itself, who decides whether the fellow was innocent or guilty, at fault or not at fault? I would suppose except as expressly provided here that would be by State law, but I submit there is nothing in the State that says so.

The statute certainly could have help, I think, legislatively, if it said that State law or Federal law governs in certain respects, because otherwise I can see lawyers—and I respect the right of every lawyer to raise an argument—I can see that lawyers might argue with some merit that a new Federal standard of liability has been created and that all issues of liability will be resolved by some undefined Federal liability law.

Mr. SPANGENBERG. I wish you would go farther and consider comparative negligence, too. Remember the DOT in the query. "Do you think the system could be changed?" About a third of the people said yes, it should be, and they said "How?" and of the people who answered, half of them said comparative negligence.

Mr. MARKUS. If you are going to affect the tort remedy at all, let's affect it in a good direction, and a constructive direction. That is what we are saying.

Senator COOK. Let me argue one point with you philosophically, because one of the main arguments you have presented is somehow or other you think it is absolutely wrong and unconscionable, that the guilty driver should recover.

Mr. MARKUS. I will not debate that. I don't care if he is or not. If he has collision insurance, let him get his car fixed. If he carries medical pay—I think most drivers do, in my State 85 percent are covered—guilty or not he gets his bills paid.

Senator COOK. In your statement you say "We believe that such true social reform should be funded by the general population. It should not be supported by a regressive victim tax like no-fault insurance which takes money away from the innocent in order to pay health benefits to the guilty."

Mr. SPANGENBERG. Don't take money away from the innocent and the whole paragraph can be deleted.

Senator COOK. My whole point is it is being taken away from me now. That is the basis of my rate. I am paying for the guilty driver now. Isn't this the basis by which the rates are established?

Mr. SPANGENBERG. No.

Mr. MARKUS. I tried to make this explanation before, and I really didn't finish.

Senator COOK. I know you didn't, because I am sitting here watching my insurance premiums go up each year without any accidents. The only way I can figure the company I am in, I am carrying the load for the guy who has four or five accidents and he is still insured.

Mr. SPANGENBERG. You are in the wrong company then, but don't name it. But most companies fix a rate, to an incomplete extent, which

reflects the risk that a driver in that class will have an accident that year.

Senator Cook. I don't disagree with you, but when the insurance company comes before the State insurance commissioners and asks for a rate increase, he pretty well asks that rate increase across the board. He may leave me in that classification, but he is still increasing my rate, even though he is increasing it within that classification, and the reason I am getting a rate increase is because some other classification that he can't increase the 40 or 50 percent that he ought on, he may only go 10 or 15 or 20 percent.

So in essence I am picking up part of that bill. I don't think we are going to argue too seriously about that. I hope not.

Mr. MARKUS. There is no question about that, certainly.

Mr. SPANGENBERG. That is why I am very much pleased with your approach that the Department of Transportation ought to at least take a look at the rating structures. One of the DOT studies was Dr. Brenner's analysis, which I thought was very persuasive, that there is not a sufficient distinction in rates now between the very high risk driver and the average driver.

With a collision under no-fault the average driver's rates are going to go up.

Senator Cook. By the way, I am delighted that in your combined statements you refer to court congestion and you favor "realistic quotes of judges based on population so that our courts can meet the staggering criminal dockets and have some time left for civil dockets."

Frankly, I think this ought to be considered as a constitutional amendment the same way that we considered the selection of Congressmen based on population. We should take this out of the Judiciary Committee, sitting down and deciding when a State ought to have a new judge and when it shouldn't have a new judge. There ought to be a constitutional provision that says when a population increases within a given jurisdiction it is automatically entitled to a new judge.

Mr. MARKUS. You struck a nerve. I want to add that first we are supporting such legislation.

Senator, Florida does have that in its constitution now. We are seeking similar legislation in other States, and as a matter of fact I even have pending now a case in my own district which urges that the denial of equal judges on a population basis is a denial of equal protection under the Federal Constitution.

Senator Cook. In your statement, you say, "Several weeks ago Judge Thomas C. Clark, former attorney general and supreme court justice, characterized the 'no-fault' plan as 'no fair for the public.'"

Can you give me the source of that? Was it part of a speech or was it a comment? Did he make a speech where he developed this as a matter of topic?

Mr. MARKUS. This was a speech that he gave at the California Trial Lawyers Association convention about a month ago, as I recall.

Senator Cook. Would it be possible to get a copy of that speech to put in the record?

Mr. MARKUS. I believe his remarks are contained in one of the most recent issues of our publication, *Trial* magazine, and I will be happy to supply it for the record.

Senator HART. It will be received.

(The article follows:)

[From Trial magazine, March 1971]

**EX-SUPREME COURT JUSTICE CLARK HITS NO-FAULT INSURANCE PROPOSAL**

Palm Springs—Retired U.S. Supreme Court Justice and former Attorney General Tom C. Clark criticized California proposals to adopt a compulsory "no-fault" automobile insurance concept and abolish the traditional right to a jury trial in civil cases Saturday.

Clark took issue with the controversial plans at a press conference in the Riviera Hotel preceding his luncheon keynote address to the California Trial Lawyers Association's sixth annual convention.

Calling the jury system "the only bulwark we have for protection of the individual," Clark denied claims that civil cases were the primary cause of congestion in the courts. He placed the fault, instead, on the greatly increased number of criminal and post-conviction remedy cases. A committee of Los Angeles Superior Court judges recommended abolishment of civil jury trials last month.

"Our main problem with the judicial process today, however, is a lack of information, a lack of dialog with the public. Judges," he said, "are rather sensitive to talk. They can't put on robes and join picket lines. They can't mount public relations campaigns. They have no money to take out ads in newspapers.

"Indeed, the jury system provides the only real contact the courts have with the public. All others," Clark said, "know the court system either as visitors to or violators of the system."

Clark said there are several ways to improve the system and make it more efficient and economical. He cited a pilot program underway in Minnesota involving a reduction in the number of jurors.

"The cost of maintaining the jury system is not as heavy as some say it is," according to Clark. "But even if it is, I think it is a price we can and must afford."

In the matter of "no-fault" insurance, currently under consideration in the California Legislature, Clark said the concept "does not afford the protection and certainly not the returns that civil litigation affords."

Here, again Clark called the argument that automobile accident cases are congesting the courts as "specious." In most personal injury accident cases, he said, "the determination of fault is a simple matter and once that is accomplished it is amazing how few cases ever get to the jury trial judge. Most are settled out of court."

Clark warned that the "no-fault insurance plan would impose the "same computerized, scheduled benefit type of system on automobile accident victims that Workmen's Compensation has so confusingly, ineffectively and unsatisfactorily imposed upon the American working man.

"I am a firm believer in the jury system as one of the cornerstones of our American freedoms," he said, "and would consider any elimination of it as a reduction of our basic rights."

Senator COOK. Thank you, Mr. Chairman.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Mr. Markus and Mr. Spangenberg, I would like to spend some considerable time, with your permission, to find out where lines are being drawn under existing proposed legislation and how we can draw lines in other ways in order to build a record that this committee can use in forming intelligent positions on legislative proposals. So I will go through the prepared hearing statement and ask you specific questions as they occur.

You say, "We submit that the 'no-fault' concept has been foisted on the public by a misleading multimillion dollar public relations campaign \* \* \*." Since you have broached the subject of public relations campaigns, let me ask you a few pointed questions.

First, would you tell this committee what you know about an organization called LIFT?

Mr. MARKUS. It is my understanding that there are people in Texas who are interested in political action in the same fashion as the—

Mr. SUTCLIFFE. You say people; what people?

Mr. MARKUS. I believe they are principally lawyers. I am not sure that they are entirely lawyers.

Mr. SPANGENBERG. I think the word "LIFT" translates to Lawyers Involved For Texas.

Mr. MARKUS. That is correct. They have been to my knowledge largely involved in political action efforts in the State of Texas.

Mr. SUTCLIFFE. Would you tell this committee what you know about an organization called ADOPT?

Mr. MARKUS. This is a similar political action organization that is being considered in my own State, I believe it is in its formative stages, for political action in the State of Ohio.

Mr. SUTCLIFFE. Is the political action you have mentioned directed toward any particular goal?

Mr. MARKUS. My assumption is it is toward all political action of the people who are supporting it, and I would include in that certainly legislative goals in the automobile insurance area as well as others.

Mr. SPANGENBERG. I assume ADOPT will try to work in comparative negligence, abolition of the guest passenger law in Ohio which says the guest passenger cannot recover no matter how negligent the driver is.

Mr. SUTCLIFFE. Will that organization work against anything?

Mr. SPANGENBERG. It will certainly work against any no-fault plan which takes away the right of recovery.

Mr. SUTCLIFFE. In the intangible area?

Mr. SPANGENBERG. In the intangible area.

Mr. MARKUS. I might say the items you are describing—frankly I wish they were stronger and more effective—represent a very minuscule percentage of the amount the insurance industry is now spending in this area. We have reason to believe it is many millions of dollars.

Mr. SUTCLIFFE. Are these organizations established to counter insurance expenditures?

Mr. MARKUS. No. But I gather from the tenor of your questions you are implying that this is their purpose.

Mr. SUTCLIFFE. I have no knowledge of these and am only inquiring as to what they are.

Mr. MARKUS. They are political action groups to attempt to accomplish in their States political goals, similar to those which are established by unions, trade associations and so forth. The American Medical Association has a very large one. I am afraid the ones you are describing are small in comparison to the others.

Mr. SUTCLIFFE. Has your organization considered a budget for 1971-72?

Mr. MARKUS. We will be considering a budget at the next board meeting which will occur on May 22 and will then eventually be considered by the general membership. Thus far, of course, we are in the formative stages.

Mr. SUTCLIFFE. In the proposed budget you will take before the board on May 22, have you allocated any new expenditures of significance?

Mr. MARKUS. Yes. I would say we have allocated first money for staff personnel who will assist in the relationship between the national organization and the State organizations. We also have allocated funds for a public information organization to try to carry our views to the

public in a very small way. We wish it could be more extensive, but it will be very small compared to other people who have apparently more funds for such purposes, and also to give us an opportunity to have better liaison with this Congress.

There will be some funds for that purpose so that we can give information to the Members of the Congress and their staff members who we think are anxious to hear what information we think we have.

Mr. SUTCLIFFE. So these will be experts able to offer constructive suggestions?

Mr. MARKUS. We are hopeful. These things have not been finalized.

Mr. SUTCLIFFE. It would not be in the normal sense a PR operation?

Mr. MARKUS. I think some of the effort will be in using personnel who are experienced in the field of public communications so that our position can be communicated. I am afraid that lawyers may be very effective in understanding or evaluating but very poor in communicating with the public media.

Mr. SUTCLIFFE. Let me go on to another question arising from testimony of your statement. You say "It may be worth noting that national health legislation would probably mean a major reduction in legal fees, yet we support it."

By your own estimates 89.2 percent of injured auto victims have medical expenses of less than \$500. DOT tells us that 95.8 percent were not hospitalized for as much as 2 weeks. For the record, are you sure that national health insurance will mean a major reduction in legal fees arising from automobile accidents? Because it seems to me that a very small percentage of the injury population would have a very large percentage of medical recovery upon which a fee of an attorney would be based.

Mr. MARKUS. We do know from the DOT studies that 53 percent according to their conclusions, of all economic loss are medical expense. The American Insurance Association claims 61 percent of all economic loss are these medical expenses. I cannot help but say that that involves the potentiality of a major reduction in legal fees. It seems to me that, manifestly, is there.

Mr. SUTCLIFFE. What is that? Are legal fees a measure of intangible loss?

Mr. MARKUS. No. I cannot tell you what the legislation would be in the national health legislation, but it would seem there is a great likelihood that no one would need a lawyer to recover those fees. I assume the frequency for needing a lawyer for social security cases is much lower, though there are some, when people need and should have lawyers. The frequency in national health insurance programs should be much lower.

Mr. SUTCLIFFE. As to its impact on the tort liability system, we were trying to analyze the need for lawyers in the tort context, not in the context of pursuing claims for national health insurance.

Mr. MARKUS. I think first to the extent that you remove the medical expense element from a claim you have significantly reduced legal fees, and secondly—

Mr. SUTCLIFFE. Now, let me understand what you say about, "Significantly reduced legal fees." If more than 90 percent of the accidents have less than \$500 in medical expenses and you have a certain percentage of your fee based upon recovery, then as to the individual

lawyer, is there going to be a sufficient reduction in the fees he recovers?

Mr. MARKUS. The answer is yes.

Mr. SPANGENBERG. Again you are talking about dollars, aren't you? Half of all claims are settled for \$500 or less, but that is only 7.8 percent of the dollars. I think about 20 percent of the cases produce 80 percent of the dollars.

Mr. SUTCLIFFE. That is the point. If you are still preserving 80 percent of the dollars upon which the legal fee is based, how much of an impact upon attorneys' fees is the national health insurance going to have? I am simply trying to clarify the record.

Mr. SPANGENBERG. I have had a number of cases in which the medical expenses exceeded \$15,000. The national health insurance programs in Canada, for example, all provide that the national fund has a lien on recovery and gets reimbursed. If I recover for a client the \$15,000 in medical fees, which is subject to a lien which is reimbursed, I do not charge the client on that. He did not get it. Therefore, if you are taking out—there is an assumption in here that the national health insurance would be of the type around the world most of which lien their payments, and if you recover they take it back and the lawyer does not charge a fee on it.

This cuts across not only automobile cases, but all broad liability cases—I was going to say air crash cases, although I have only had two cases of survivors of air crashes, they are mostly death cases, of course.

Mr. SUTCLIFFE. I do not want to belabor this point, and upon reading the record if we have any further questions, perhaps we could submit them in writing to you to clarify that statement about how there would be a rather marked reduction in legal fees from a national health insurance program.

Mr. MARKUS. I think anything we are talking about would be dependent upon the language of the particular legislation, but we have reason to believe that it would probably have a significant impact. Of course, it will depend on the language of the legislation.

Mr. SUTCLIFFE. Mr. Markus, Mr. Spangenberg, you point out that your organization has fought hard for the elimination of contributory negligence as a defense to a claim, and that you also have tried to eliminate certain tort immunities—host-guest statutes and the like. Will this kind of elimination or modification of the existing tort system increase the amount of benefits reaching the injured victim?

Mr. MARKUS. It will increase the number of people who are entitled to recover. To the extent that people are now complaining that some innocent victims are not receiving compensation, we must acknowledge, not only that, we must endorse their position that some innocent victims are not receiving compensation, and we say they should be receiving compensation.

Mr. SUTCLIFFE. A corollary question must follow then. Would this enable more cases to be litigated?

Mr. SPANGENBERG. No. Dr. Rosenberg did a study on that in Arkansas which changed from a harsh contributory to a comparative negligence statute. His results were that more people were paid. They were paid on the average less. The total dollars was about the same. That is, if you give the jury a chance to knock off 5 or 10 percent they

will. If you say all or nothing, some cases where they would tend to reduce, they do not. It has not led in the States that have comparative negligence to more litigation.

Mr. SUTCLIFFE. I am asking if we as a committee, when considering a modification at the Federal level, as you have suggested, to establish a comparative negligence program, must consider the litigious effects of that particular modification.

Mr. SPANGENBERG. I can tell you there is no statistical evidence in the States which have adopted comparative negligence that it increases dollars paid out or premiums or that it increase litigation. Litigation is a very small percentage of the cases in any event, as you know.

Mr. MARKUS. As a matter of fact, it may well have the opposite effect, because it increases the likelihood of settlement, since the issue of whether it is all or none is gone. It is then that you should be getting some type of compromise.

Mr. SUTCLIFFE. Mr. Markus, in your statement you ask "Government and industry to stop paying lip service to safety measures."

In light of Congress enactment of the National Traffic and Motor Vehicle Safety Act, or Highway Safety Act, certain proposals in S. 976 and the alcohol study now being funded out of funds from the Highway Trust Fund, is that comment appropriately directed to this committee?

Mr. MARKUS. Not at all. First, may I make a word of explanation that may help us. The language that you are reading was the language that was provided to you last night. There were some minor modifications in editing which is in the prepared statement submitted this morning. I apologize for our inadvertence in not having our final form to you last night.

Our attack here is there has been really inadequate attention to driver licensing requirements, and this is not necessarily by this Congress—

Mr. SUTCLIFFE. Who is responsible for licensing?

Mr. MARKUS. To date it has largely been with the States, and it may well stay there. We are saying that measures in those areas are necessary, that the intoxicated driver has to be gotten off the roadway and the incompetent driver has to be gotten off the roadway, and roads have to be made better and cars have to be made better. The Federal Government has some involvement in this, and frankly it has done a much better job than the States in this area. We think that more effort is necessary.

Mr. SUTCLIFFE. I simply wanted to clarify what your meaning and focus was for the record.

Mr. SPANGENBERG. When you mandate safety belts on the cars you ought to mandate that the drivers wear them.

Mr. SUTCLIFFE. We have made efforts through passive restraints requirements.

Mr. SPANGENBERG. You are coming to that.

Mr. SUTCLIFFE. I think the Department of Transportation is trying to protect the passenger and the vehicle.

Something puzzles me in your testimony where you claim there is no truly reliable actuarial study to support the claimed premium reduction. How does an actuary proceed to calculate the amount of premium necessary to take in, in order to cover future losses?

Mr. MARKUS. There are two basic elements involved in this estimate or guesstimate, if you will. First, to determine what the average payment will be and how that compares to the average payment now, and second, to determine how many people will be paid and how that compares to the number of people that will be paid now, and then imposing certain historical data on those conclusions so as to arrive at the premium number.

There is no sound basis on which to predict either of the critical numbers, that is, whether the average payment will be one number or a different number is really a big guess, based upon very limited data because there is not data available for a huge number of people who are injured.

The Department of Transportation study itself points out the severe limitations on its own data because it was only able to survey a small number, and even the insurance industry is guessing. Even more tragic is their guess as to how many people they will pay.

Mr. SUTCLIFFE. Isn't this from an actuarial standpoint, one who looks at past experience to judge future experience—

Mr. MARKUS. But there is no experience. That is what I am saying.

Mr. SUTCLIFFE. That is the precise point. Your condemnation of no precise actuarial data is a condemnation of the science of an actuary which must rely on past data. Any change to a new system will have a very difficult time establishing reliable actuarial data.

Mr. MARKUS. I agree.

Mr. SPANGENBERG. We are in agreement on that.

Mr. SUTCLIFFE. So I just want for the record to point out that this is not necessarily a condemnation of attempts to move in a new direction. If we were to rely upon precise actuarial data we could never move, because the science of actuary is based on prior experience.

Mr. MARKUS. Only to the extent, Mr. Sutcliffe, that if you make a drastic change you have got to recognize that there are some highly imponderable, unpredictable characteristics, and consider that as one of the factors. We really do not know what will happen to the rate structure. I think there are wild guesses which are being made for public benefit but not for anybody's real reliance.

Mr. SPANGENBERG. In the year 1968 there were very reliable estimates of how many people were injured. The National Institute of Health made them, the National Safety Council made them, Travelers Insurance Co. made them, DOT made a head count. The number of people injured in that year ranged from 2 million to 2.3 to 3.1, 2.6 and 4.4 million. That is a tremendous range. The DOT in its formal published study used the 4.4 million—

Mr. SUTCLIFFE. 4.75.

Mr. SPANGENBERG. Well, one of them on economic consequences said 4.4

Mr. SUTCLIFFE. The final report is 3.75.

Mr. SPANGENBERG. That was based on the Statistical Abstract of the United States. The table to which they refer is published in the abstract but it is itself only an estimate by Travelers Insurance Co. At the same time another department of DOT has published what was supposed to be the most accurate compilation of all highway accident facts in 1968 which said 2.6 million.

Mr. SUTCLIFFE. Is there any question, though, that we have a goodly number of automobile accidents?

Mr. SPANGENBERG. Oh, there are a lot of them. There are a lot of them. And I do not fault the actuaries if they cannot come up with a number of how many people are injured and how badly. The data just is not there.

Mr. SUTCLIFFE. The Department of Transportation is working very hard to develop an accident investigation system which will be able to give us the precise estimates and the causes for each accident.

Mr. SPANGENBERG. I think their 2.6 is the best estimate of all, although it is not in their published report.

Mr. SUTCLIFFE. To the point about the failure of the S. 945 to require compulsory liability insurance, you have already pointed out that three States only in the United States require compulsory liability insurance.

Would you care to comment on why you have singled out S. 945 for criticisms whereas under the existing situation your compulsory States are only three in number?

Mr. MARKUS. May I make a brief explanation since I was the source of that particular writing?

S. 945 prohibits any State from either having compulsory insurance or even having a financial responsibility law, as I read it.

Mr. SUTCLIFFE. Explicitly?

Mr. MARKUS. Yes.

Mr. SUTCLIFFE. Explicitly?

Mr. MARKUS. Yes.

Mr. SUTCLIFFE. Have you had an opportunity to review the House bill that parallels S. 945—

Mr. SPANGENBERG. I have not.

Mr. SUTCLIFFE (continuing). Which has made changes of this nature to comply with some of the problems that you have spotted?

Mr. MARKUS. I cannot tell you whether that change was made.

Mr. SUTCLIFFE. I just suggest that you might look at that. This committee will look to see if they have taken care of that problem.

You mention the need for property loss reduction standards and sense titling laws.

Are you aware of S. 976 before this committee at this time?

Mr. MARKUS. In general terms, I am. Not in specifics.

Mr. SUTCLIFFE. This legislation does mandate particular bumper standards, gives authorities to the Department of Transportation for property loss standards, and sets up a diagnostic inspection system to remove unsafe vehicles from the roadways. It was introduced as a package along with S. 945 sponsored by Senator Hart and Senator Magnuson. To suggest that S. 945 did not consider that is to ignore the joint introduction of that legislation along with S. 976.

Mr. MARKUS. All we say is the package should be untied, that there are good things in much of this legislation and there are some bad things in some of this legislation.

Mr. SPANGENBERG. We certainly support the bumper bill.

Mr. SUTCLIFFE. If you had your choice, would you support a Government-run facility for providing tangible loss benefits to injured accident victims, or would you prefer that the tangible loss sources be left to private insurance carriers?

Mr. SPANGENBERG. Government, based on world experience. It is much cheaper that way when you go into any kind of welfare or social legislation, which we think this is.

For instance, Ohio is one of the few States which has a State-funded workmen's compensation system. We pay benefits quite comparable to other States. The total cost of administering it has always been less than 10 percent of the premium. The cost of a private insurance carrier doing it runs 65, 67, and 70 percent.

Mr. SUTCLIFFE. Has your organization ever considered the possibility of putting on a mandatory first-party basis recovery for intangible loss?

Mr. MARKUS. I am not sure how this would be structured.

Mr. SUTCLIFFE. Let's just suppose that you submit it to a jury, as we do now, and you have the representation of a lawyer and the insurance company can bring in their lawyers to determine the level of damages. But in any event, the person is compensated for the intangible losses on a first-party basis.

Mr. MARKUS. Of course, this is what you are doing now. The only additional factor you are adding—

Mr. SUTCLIFFE. You are not quite doing it now when—

Mr. MARKUS (continuing). Is the fault factor.

Mr. SUTCLIFFE (continuing). Forty-five percent of the people who make claims recover, and their recoveries are not uniform.

Mr. MARKUS. Now, I understand you better. If your question is do we think it would be wise to have legislation that in some fashion pays the total economic loss and in some other fashion pays the total human loss for everybody, the answer is yes.

So that you can have no misunderstanding about this, what we are saying is if you are going to have some method in which everybody gets paid everything, we see no problem with that. But the difficulty is to date our society is not willing to pay everybody for everything. Therefore, it must divide the society into those that it finds more meritorious and less meritorious. The more meritorious get paid everything, the less do not.

Mr. SUTCLIFFE. If you submitted your first-party claims, for intangible losses to a jury and argued the case, do you think there would be different degrees of recovery for those intangible losses even if they are on a first-party basis?

Mr. SPANGENBERG. I have such a strong feeling, I have seen some cases where the drunk wraps himself around a tree at 90 miles an hour, he really ought to hurt on his own time.

Mr. SUTCLIFFE. What about the jurors making those awards, would they agree with that?

Mr. SPANGENBERG. I think they will, but we don't know.

Mr. SUTCLIFFE. From the standpoint of your expertise in international systems and looking towards what kinds of compensation systems have been developed, I wanted to get your reaction to that kind of a proposal.

Mr. SPANGENBERG. My experience has certainly been—and judges today, because in many of the other countries they have a judge trial system where the judge tries the fact as well and makes the award—I think the experience of all of us was when it comes to compensating

intangibles the trier of the fact, be he judge or jury, does seem to come out with numbers that reflect the real guilt or the real innocence.

Mr. SUTCLIFFE. Gentlemen, I am now going to beg your indulgence and ask to play the numbers game in terms of statistics so that we can understand what element of the population of injured victims we are concerning ourselves with when we try to draw the line as to where we will allow tort action for recovery of intangible losses.

Let me direct you to your testimony where you say that Senate bill 945 will be fair to perhaps 1 percent of all injured victims and unfair to 99 percent.

Mr. SPANGENBERG. That is a conservative number.

Mr. SUTCLIFFE. Let's analyze that if we can on the basis of the information we have and see why our comparisons are somewhat different.

In your appendix you explain that the 1 percent figure was arrived at through discussions with people involved in processing workmen's compensation claims.

Mr. MARKUS. In part. That confirmed other data.

Mr. SUTCLIFFE. You were using figures for injured workers, then, rather than an injured driver?

Mr. SPANGENBERG. We were using DOT figures on how many people in the injured automobile accident victim population of the United States might approach your 70-percent permanent partial disability figure.

Mr. SUTCLIFFE. Then let me address you to the final report which has been provided for you if you do not have it with you. It is the white book there on the table.

Table 6 lists the type of permanent injury as to fatality, permanent total disability, permanent partial disability, permanent disfigurement, all the permanent injuries, and the paid claimants constitute various percentages; as you can see from the table which we will put in the record at this point.

(The table follows:)

*Table 6—Percentage distribution of paid personal injury claimants by type of permanent injury*

<b>Type of permanent injury :</b>	
Fatality .....	1.0
Permanent total disability .....	.2
Permanent partial disability .....	4.0
Permanent disfigurement .....	2.5
No permanent injury .....	92.4
<b>Total <sup>1</sup> .....</b>	<b>100.0</b>

<sup>1</sup> Detail does not add to total due to rounding.

Source : Automobile personal injury claims, p. 19.

Mr. MARKUS. I think this confirms what we said.

Mr. SUTCLIFFE. Let's carry through and see if we can use this to confirm what you have said so that the committee can understand your figures.

Now, let me ask you, is it possible to extrapolate from table 6 to the total injury population and assume that of the population not paid, which is half the population, that the same ratio of injuries and types of injuries are occurring?

Mr. SPANGENBERG. We would think so.

Mr. SUTCLIFFE. If anything, it is favorable to the comparison because these people who are guilty and don't recover under tort may have been the drunken driver, and those involved in the more serious accidents. We don't know, but that is a possibility.

So, if we have a 50-50 breakdown, then the ratios we have before us remain the same and constant for the entire injury population; is that correct?

Mr. MARKUS. Assuming, I have got to make an assumption here, and the DOT makes the assumption, too, assuming that the DOT data here is reliable, and they recognize they have very little basis to make these statements here, as to what percentages were permanent total disability, those are objective judgments.

Mr. SUTCLIFFE. If you can submit data to us which refutes these and provides better data, please do.

Mr. MARKUS. I am willing to accept them for purposes of discussion, certainly. They are all we have.

Mr. SUTCLIFFE. This shows as to fatality, 1 percent of the population suffered fatality; as to permanent total disability, 0.2 percent; as to permanent partial disability, 4 percent; as to permanent disfigurement, 2.5 percent. These are the permanent injuries.

Nonpermanent injuries were 92.4 percent.

Mr. MARKUS. So you are suggesting that 7 percent instead of 1 percent is really fair.

Mr. SUTCLIFFE. Let's start with that approach. We don't know—

Mr. SPANGENBERG. As a quick statistical answer, as soon as you say 70 percent permanent partial, almost everyone of those people would be considered industrially or in any other way total disability. If you get over 70 percent, you have to be totally blind.

Mr. SUTCLIFFE. Let's assume that the intent, if not the execution, of S. 945 were to cover the permanent injuries.

Mr. SPANGENBERG. Then, it is totally different.

Mr. SUTCLIFFE. But let's then—

Mr. SPANGENBERG. That is only 95.8 percent who were not.

Mr. SUTCLIFFE. Bear with me, because I am very new at this analysis.

Let's take away the 4-percent permanent partial disability, because S. 945 clearly covers fatality, permanent total disability, and permanent disfigurement.

Mr. SPANGENBERG. Irreparable disfigurement, which means you are going to have lawsuits over whether or not plastic surgeons with seven proceedings can cause correction of a disfigurement.

Mr. SUTCLIFFE. I want to get a general picture of what we are covering and what we are not covering and at what point we might draw the line. In fact, because I have figured it out on the basis of a permanent partial disability coverage, which I think was the intent, if not the execution, the recovery for permanent injuries of S. 945—

Mr. SPANGENBERG. The original bill did.

Mr. SUTCLIFFE. The original bill introduced did, and there was some difficulty in defining permanent partial that caused the initial placing of it at 70 percent. We will not debate that issue; we will simply explain that at this point.

This means on the basis of permanent injury 7.6 percent of injured victims are under the Hart-Magnuson bill capable of recovering for personal injury.

Mr. MARKUS. I can't accept those numbers; you will forgive me. It mechanically sounds right, but then we have to know whether you are saying any permanent disfigurement or permanent serious and irreparable disfigurement.

Mr. SUTCLIFFE. We have assumed that we are covering the permanent injury.

Mr. MARKUS. All right. In that case, I would say that if you are counting injuries and deaths, that is a correct number.

Mr. SUTCLIFFE. That is permanent injury?

Mr. MARKUS. Yes.

Mr. SUTCLIFFE. You would compare that 7.6 as the fair portion?

Mr. MARKUS. Fairer, certainly.

Mr. SUTCLIFFE. We are working with that 1-percent-99-percent formula. You would compare that to the 92.4 percent as being unfair. OK. But it seems to me at that point you are comparing apples and oranges. The 7.6 percent would more appropriately be compared if you are judging fairness to those injured victims who suffer intangible losses that your organization itself judges compensable under your definition of compensable loss that you provided our committee, or even if we don't—I don't want to argue that that was something that you absolutely support; that may have been a suggestion for modification of language. But let's assume we have to make a comparison of the 7.6 percent that we cover not to the total injured population but to those likely to have any legitimate intangible loss claim.

Mr. MARKUS. Mr. Sutcliffe, it is impossible for me as a lawyer who sees injured people to say that someone who does not have a permanent injury, as you have described it, does not have a serious loss.

Mr. SUTCLIFFE. I am not arguing that point with you. I am trying to get the perspective of what you have covered here and what you want us to cover and how far apart we are. You are saying that our distance is 7.6 to 92.4 percent. I am suggesting that the distance is much less than that. I am suggesting our distance is 7.6 percent compared to the amount of those claimants in the injury population who are likely to suffer intangible loss.

Let me work from that point.

Mr. MARKUS. A hundred percent of those people suffered intangible loss. The only question is whether some of them are small enough that the society is going to make them bear it themselves.

Mr. SUTCLIFFE. The DOT study shows that seriously injured accident victims constitute about 12 percent of the total injury population.

Mr. MARKUS. That is by their definition of serious disability.

Mr. SUTCLIFFE. Wait a minute, please. I recognize that, I understand that.

Mr. MARKUS. It is a word of art, their language.

Mr. SUTCLIFFE. Would you explain that word of art?

Mr. MARKUS. Sure. It is set forth in the economic consequence study right in the beginning. It is defined to be not what someone thinks is serious but it is defined to be "medical costs excluding hospital bills of \$500 or more, or 2 weeks or more hospitalization, or"——

Mr. SUTCLIFFE. Let me stop you right there, 2 weeks or more of hospitalization. That was the 14-day line that you drew when you submitted to us suggestions for language for the definition of compensable

loss. So, we are not that far apart when we are talking about where the lines are drawn. All right.

Mr. MARKUS. You will find the definition on page 9 of the study.

Mr. SUTCLIFFE. Let's assume that that is at least a ball park guess as to the number of claimants in the injured population that suffer intangible loss that our society at this point in time deems compensable. We will certainly admit that that might not be, because some people who suffer the loss of both eyes, one day hospitalization and virtually no other cost, would not be compensable under that definition.

So under that definition 12 percent are seriously injured. We recognize that there would be people who exceeded that who a jury might not consider meritorious. But there would be a trading back and forth.

If this is so, by the logic of your own argument, S. 945, the Hart-Magnuson bill, which is picking up 7.6 percent of the 12 percent, is really covering 63 percent of the intangible loss that we have deemed for this discussion to be deserving of compensation. The ratio is 7.6 percent of the injury population compared to 12—

Mr. MARKUS. Why don't you want to cover a hundred percent? Why is it a determined effort to give some people injustice? I don't understand.

Mr. SUTCLIFFE. We have just agreed that some losses are so small that we would ask them to absorb it.

Mr. MARKUS. We simply said if that is your goal that you should take that approach, but you should not simply exclude the consideration that these people are suffering.

Mr. SUTCLIFFE. Let's say our goal is to cover intangible losses for seriously injured accident victims which seemed to be what you were telling us we were not doing. What I am trying to find out is how far have we come and how far do we have to go to cover the seriously injured accident victim.

Mr. SPANGENBERG. The only difference between us is in communicating in words. When we say there are people who are hurt, who have serious and intangible losses, you say serious means what DOT said it meant in their definition. That isn't what we meant really. I think if a man has to stay out of work for—

Mr. SUTCLIFFE. Would you provide for this committee a definition of seriously injured victim and that definition would be the label to trigger recovery for intangible loss?

Mr. SPANGENBERG. Sure.

Mr. SUTCLIFFE. You have already done this apparently with the information you have provided us previously in the draft that Senator Hart has read into the record. If we used that test, I suggest to you that our 12 percent of the entire injury population is a very accurate or it is a very close approximation of the number of people that we would recompense for intangible loss.

Mr. MARKUS. I don't agree with that conclusion.

Mr. SUTCLIFFE. Perhaps for the record you could explain the points of disagreement, and I would be more than happy to develop with you any areas where communication as to what we were discussing has broken down.

Mr. MARKUS. Do you want me to do that now? I didn't understand. Was that a question?

Mr. SUTCLIFFE. If you feel capable of that now, sir.

Mr. MARKUS. I will do the best I can.

As Mr. Spangenberg pointed out, your 12.5 is based upon a work of art called serious injury in the definition given by the Department of Transportation. As I tried to read before from page 9 of the study, that is "2 weeks or more of hospitalization, or, if working, 3 weeks or more of missed work, or, if not working, 6 weeks or more of missed normal activity."

Those standards are all considerably stronger than the standard we suggested might be a conceivable standard. So, I must say, instead of 12.5 percent, I would anticipate you are talking about something in the nature of 25 percent or 35 percent or something perhaps in that category.

Mr. SUTCLIFFE. The point still remains that, when you make your comparison of what percent of the Hart bill at this point is fair and what percent is unfair, you yourself should be obliged to consider that element in relation to the injured accident victim population which reflects those people who would be eligible for the recovery of intangible loss.

Mr. SPANGENBERG. I will speak off the top of my head and probably regret the words for the rest of my life.

If you start out that some people are not hurt very much and maybe the system can absorb not paying them anything for their intangibles, maybe the crude approach is half of them are hurt bad and half of them are hurt not very much and pay the half that are hurt badly. So the halfway figure I think I could get out of the statistics very easily.

If they have total economic loss—hospital, doctor, medical, and lost time, or in the case of the housewife the loss of equivalent days that the worker would have temporary disability—that would amount in total to, I think on the DOT studies, about \$150. That is your halfway figure. It will be a very small number.

If you want to go half and half with us, I think we would consider that.

Mr. SUTCLIFFE. On page 41—I think this is responsive to the point you make—the DOT final report, the average payment for recovery in tort for a nonpermanent injury is \$830. The average economic loss was \$333. So, for the record, if we used the Department of Transportation's definition of seriously injured—if we used as a line to be drawn permanent injury versus nonpermanent injury, on the average we would be asking the population to give us \$497 worth of intangible loss, the difference between the average economic loss and the—

Mr. SPANGENBERG. I follow you. Right.

Mr. SUTCLIFFE. So that gives us at least a monetary measure of what we would be asking society to do.

Mr. MARCUS. I am not sure, Mr. Sutcliffe, and maybe some caution should be exercised here. I believe a good deal of the data we are looking at from the Department of Transportation only relates to people who are already classified as serious injury cases.

It may be that 100 percent of these people are classified as seriously injured people under the standard that I have described.

Mr. SUTCLIFFE. You are correct. In table 13 they are classified as seriously injured, but there is a breakpoint between permanent injury and nonpermanent injury. That is the drawing line I was trying to get.

We are talking on an average of asking a person to give up \$475 of intangible loss recovery. I am trying to focus for the hearing record at what level we are approaching.

Let's focus on what S. 945 covers. Through the tort liability system it permits the recovery of tangible and intangible loss not covered under the first-party provision for all types of permanent injury with the problem of the 70 percent permanent-partial which the committee has recognized. Through its first-party coverage it covers almost all economic losses of all victims.

Mr. MARKUS. May I stop you for a minute?

I think there is a fundamental error. The statistic that we have heard described over and over again, that the person who has the grievous injury with over \$25,000 economic loss, is only getting 30 percent of his payment. He is going to get 32 percent under the Hart bill, because the change that is made for wage repayment extends only for 30 months or even 36 months under the House form, and that is where the loss is.

The DOT study shows it is all in future losses, and you are not covering many of those. So as a practical matter, you are not helping that situation significantly.

Mr. SUTCLIFFE. I have tried to calculate what percentage of the total economic loss would be covered by the Hart-Magnuson proposal using the Department of Transportation statistics. So, let me present that to you and get your views on this.

On page 1 of the economic study, it is reported that only 0.5 percent of the seriously injured accident population had economic loss exceeding \$25,000. The seriously injured population constitutes, as we have explained before under the definition of the Department of Transportation study, 12 percent of the total injured accident victims.

Thus, on those figures, figuring it with a \$25,000 cutoff instead of the \$30,000 wage replacement cutoff that it is, to be conservative, S. 945 would not cover the economic loss in 0.6 percent of the cases involving injured accident victims. Conversely, it would cover the economic loss in 99.4 percent of all bodily injury cases.

Mr. MARKUS. I think, as you said, you have been playing numbers as you started this discussion. What we are saying is the people who now have protection without this law are still going to be protected. Those that do not now have protection, that is that same very small percentage which is something less than 1 percent, you are still not going to protect.

Mr. SUTCLIFFE. Everyone who operates a vehicle will be required to have this basic economic loss protection. Everyone would then be compensated for their economic loss except 0.6 percent of the injured accident victims.

Mr. MARKUS. That is the same—

Mr. SPANGENBERG. You are very light on the fatality side from my general experience in the field.

Mr. MARKUS. That would be about 1 percent, I think.

Mr. SUTCLIFFE. That is the economic loss recovery for the person whose losses exceed \$25,000 in economic loss.

Mr. MARKUS. The same people.

Mr. SUTCLIFFE. The Hart-Magnuson bill covers 99.6 percent of that economic loss.

Mr. SPANGENBERG. Your first-party benefits are the best in any no-fault bill that has been introduced in the United States.

Mr. SUTCLIFFE. So we are at a point now——

Mr. MARKUS. Mr. Sutcliffe, I think I am not communicating. Maybe I should try to make this clear, though I agree with Mr. Spangenberg that the first-party benefits are the best that have been introduced, we should not fool ourselves by pretending that you have solved the problem that you described, in which people with more than \$25,000 economic loss are only getting 30 percent of their economic loss reimbursed.

That is not going to be changed under this. Those are future wage losses that are beyond the 3-year interval.

Mr. SUTCLIFFE. And that accounts for 0.6 percent of the injured population?

Mr. MARKUS. Today and later.

Mr. SUTCLIFFE. Let's compare the economic compensation for the person who has \$25,000 worth of damage now to what the Hart-Magnuson bill would provide.

Mr. SPANGENBERG. Why should we? What you are saying in the Hart bill is go out on a compulsory basis and buy first-party health and accident benefits and pay for them out of your pocket, and once you have bought it and paid for it, you will get the benefits.

Mr. SUTCLIFFE. That's it.

Mr. SPANGENBERG. If you wish to do that, we are here saying we are not quarreling with that approach.

Mr. SUTCLIFFE. Let me say why it is important to make a comparison of what the proposed legislation covers and what the existing situation covers. It has been claimed that the Hart-Magnuson bill is heartless. At the present time for people who have claims of economic loss of more than \$25,000, their average recovery would be 30 percent of the economic loss.

Mr. SPANGENBERG. Are you talking about under the tort liability system?

Mr. SUTCLIFFE. Yes.

Mr. SPANGENBERG. If you want to be fair about that, shouldn't you add the amount they now recover under first-party benefits that they are already carrying?

Mr. SUTCLIFFE. And for the \$25,000 economic loss that brings it up to what, around 40 percent or around 45 percent?

Mr. SPANGENBERG. Something like that.

Mr. SUTCLIFFE. If you will provide that for the record.

That comes from life insurance, social security, and other forms of compensation.

Mr. SPANGENBERG. Medical pay, disability insurance, and so forth.

Mr. SUTCLIFFE. Would you agree, then; that under the proposal before us we have covered 99.6 percent of the people who will experience economic loss?

Mr. SPANGENBERG. You have compelled people to by first-party health and accident insurance to cover the loss.

Mr. MARKUS. I suggest you get better coverage——

Mr. SUTCLIFFE. One hundred percent coverage?

Mr. MARKUS (continuing). If you just required them to buy a life insurance policy. You get better economic response to the numbers that

you are describing if you simply said everybody must buy a life insurance policy at \$50,000 for operating an automobile.

You would get a bigger impact on those same numbers that you are talking about.

Mr. SPANGENBERG. That would take care of the fatality cases immediately.

Mr. MARKUS. Numerically those are the biggest numbers.

Mr. SUTCLIFFE. In terms of what is being covered now under the Hart bill for intangible loss, at the upper end of the spectrum in the permanent area there is coverage and there is an absence of coverage below that point to some unknown where society might determine that intangible loss is not necessary to cover, and your recommendation to this committee is to move the line as has presently been drawn down to some point to cover those intangible losses?

Mr. MARKUS. No, it is not. It is our recommendation to this committee that you not have a line and that there be full compensation for everybody that is an innocent victim now.

But if you are determined to have a line, we suggest that you have drawn it at the wrong place.

Mr. SUTCLIFFE. Are you suggesting that the present lines that are drawn in the tort system where for the economic loss of \$500 that four times the economic loss recovered for intangible losses is appropriate for the full compensation.

Mr. MARKUS. As the Department of Transportation itself pointed out, the relationship between the medical expense or economic loss and the severity of the injury is one of the most illusory things that can be stated, that it is almost meaningless.

I can cite to you—in fact, that is one of the great problems in the Massachusetts statute—I can cite to you people with really tragic injuries who do not have medical expenses of \$500 and people who have medical expenses of \$500 who have trivial injuries.

Mr. SPANGENBERG. I have had people blinded for less than \$500. The boy with the traumatic amputation didn't have large medical bills.

I am suggesting if he has \$400 in medical bills to repair a stump for a lost arm, I am not going to be shocked if he got four times that as his payment for intangible losses, and all that kind of cases go into your average number.

Mr. SUTCLIFFE. But you mentioned the Massachusetts situation where they were using the bodily injury claim to pay for property damage. How do we avoid that kind of situation while allowing for the interest that you want to protect?

Mr. SPANGENBERG. Have compulsory property damage insurance. You end the problem immediately. It makes as much sense to have compulsory collision insurance as compulsory bodily injury.

Mr. SUTCLIFFE. Would you make it compulsory or would you take away the tort remedy for the automobile and let the individual opt to insure or not insure?

Mr. SPANGENBERG. Then you are going to create the same kind of problem. I say be blunt about it, have compulsory collision insurance and then take away the tort remedy if that is what you think you ought to do.

Mr. SUTCLIFFE. I apologize for spending as much time in questioning, but I hope this has been productive.

Mr. SPANGENBERG. It is valuable to us because it clarifies your thinking, and I hope it makes us clarify ours. And you have given us some work assignments to do to furnish information to you which we will get on and furnish.

Mr. MARKUS. May we say we stand ready at any time to work with the committee or the committee's staff, if they want any additional information, to try to supply it. We think perhaps we can be of help to this committee.

Senator HART. Let me thank you both for your patience. It has been a long morning, I know. The committee will, I am confident, give thoughtful consideration to every argument which you have raised.

Having said that, I will plead just as my law school classmate pleaded when he started, I have a built-in bias, too. I hope that the decision of this Commerce Committee in response to these arguments will be basically the same decision that the Department of Transportation's conclusion was when, I am sure, Mr. Spangenberg made the same arguments, because he was a member of that study, to them.

You didn't persuade them and you haven't persuaded me, but you have sobered me. How the committee will react I don't know.

Mr. MARKUS. May I say, Senator Hart, that the final report of the Department of Transportation does not direct the language of Senate bill 945. That is from sources otherwise. It is not derived from the report of the Department of Transportation. You may have used some of the data in reaching the conclusions that you thought were appropriate, but certainly Senate bill 945 is not a bill that has been drafted by the Department of Transportation in its language, form, or substance.

Senator HART. Right. The Department of Transportation has recommended to the Congress that we go to a no-fault system and we do it fast.

Mr. SPANGENBERG. And that you preserve the right of the victim to sue in the tort system, and they said the cutoff was if they had an economic loss of more than \$1,000. I argued, over there, \$500.

Senator HART. How we draw that line is an issue that you clearly presented to us this morning.

Mr. SPANGENBERG. You are very gracious to thank us, Senator Hart, for responding to what we consider a very great privilege indeed to be allowed to come here and address you.

Senator HART. Senator Cook, who had to go to meet an earlier commitment, as he left, asked me to introduce for the record at this point the resolution adopted by the Kentucky State Bar Association with respect to the several bills that are under consideration, S. 945, S. 946, S. 947, and S. 948, and the resolution expresses opposition of the Kentucky bar to each of those bills.

So, I might as well throw in the editorial of the *Louisville Courier Journal* of April 26 which disagrees with the Kentucky Bar Association.

(The resolution and editorial follow:)

#### RESOLUTION

Whereas, the Kentucky State Bar Association at its annual convention held on April 22, 23, and 24, 1971, felt the need to explore the pros and cons of the No-Fault Concept of insurance which has become a matter of national importance and the subject of proposed legislation in the Congress of the United States, Senate Bill Nos. 945, 946, 947, and 948, and other state legislatures throughout the country, and

Whereas, the Kentucky State Bar Association feeling the importance to properly acquaint its members with all relevant facts and possible results incident to the No-Fault Concept has notified each member of the Association of the study undertaken at the annual convention; and

Whereas, the study undertaken by the Kentucky State Bar Association at the convention assembled has established the following facts:

1. That the major premise for the introduction of the No-Fault Concept, that is congested Court dockets, depriving the litigants of a proper trial, does not exist in the Courts of the Commonwealth;

2. That the No-Fault Concept destroys incentive for safety, and, therefore, highway accidents will increase and excepted conduct will be replaced by irresponsible highway conduct, resulting in higher accidents on the highways of the Commonwealth of Kentucky;

3. That the Concept of No Fault is alien to the Judo-Christian heritage of this country that one must be responsible for his carelessness or negligent conduct involving other citizens.

4. That the No-Fault Concept will sacrifice the constitutional rights of the aggrieved citizen to have his rightful redress in Court;

5. That the No-Fault Concept discriminates against the poor, the blue and white collar workers, the frugal citizen, the young and those on fixed incomes who could not afford to fill the many gaps for insurance protection caused by the No-Fault Concept;

6. That the No-Fault Concept denies a citizen of his full right to recovery for pain and suffering, for disfigurement, disability and the monies lost as a result of being denied his right to pursue his gainful employment;

7. That the limited experience where No-Fault has been adopted clearly demonstrates an *increase* in the premium to be paid by the average citizen in order to obtain *less* protection;

8. That payments under this concept would be indiscriminately made to all citizens, to the sober and the drunken, the careful and the careless, the responsible and irresponsible and to the honest and the dishonest regardless of merit and oblivious to fault;

9. That the limited experience where No-Fault has been adopted clearly demonstrates that the inept language, complicating legislation and friction between insurer and insured by low benefits results in more claims and more lawsuits, further encumbering the dockets of the Courts; now, therefore, be it

*Resolved in convention assembled*, That the Kentucky State Bar Association, through its membership, goes on record as denouncing the No-Fault Concept of Insurance and specifically the proposed legislation in the Congress of the United States promoting the concept, as being violative of the American way of life and as hereinabove set out detrimental to the rights of the individual citizens, and further

*Resolves*, That a copy of this Resolution be made available to Senator John Sherman Cooper, Senator Marlow W. Cooke, all United States Congressmen of the Commonwealth of Kentucky, and the Governor of the Commonwealth of Kentucky so that its contents may be known to them and they may take the necessary action appropriate to their commensurate position to prevent the enactment of legislation implementing the No-Fault Concept, and further

The Kentucky State Bar Association dedicates itself to continuing its efforts to further implement the ideals set forth in this Resolution to prevent the inequities being exacted upon the citizens of the Commonwealth.

Passed this 22nd day of April, 1971.

ALLEN SCHMITT, *President*.

[From the Louisville Courier Journal, Louisville, Ky., Apr. 28, 1971]

#### COULD LOSING LEGAL FEES EXPLAIN BAR'S STAND ON AUTO INSURANCE?

As a general rule of thumb, when an organized group starts condemning something as a threat to the "American way of life" it's often instructive to see whether its target also might be a threat to the group's pocketbook.

A seeming case in point is the Kentucky Bar Association's condemnation of "no-fault" automobile insurance the other day as un-American and "detrimental to the rights of the individual citizen."

Specifically, the KBA and other legal groups opposing the no-fault concept are saying that it would deprive people of the right to sue for damages for "pain and suffering" as a result of an auto accident; that other "benefits" now available would be lost. One of those "benefits": high legal fees.

Simply stated, the "no-fault" approach means that insurance liability claims would be paid without considering who caused the accident. That is what happens now in other forms of automobile insurance—collision, for example, and "comprehensive," which protects the insured against theft, fire, glass breaking, vandalism and other hazards.

So why the resistance to extending the no-fault principle to auto liability insurance?

One reason is that the legal profession stands to lose a great deal if the present system is abandoned. In 1969, 16 cents of each \$1 of automobile bodily injury liability premiums went to claimants' lawyers fees. Another 2 cents went for court costs. Looking at it another way, in 1968 parties to auto accident litigation spent \$600 million in legal fees, and this amounted to one-fifth of the legal profession's income.

#### THE MASSACHUSETTS PLAN

An acquaintance with these facts can help the average American make a better appraisal of no-fault insurance, and discredit some of the negative arguments in what has become a real scare campaign.

The basic purpose of no-fault is to reduce litigation and speed up payments of claims, which is why we buy insurance in the first place. There is the further possibility that the no-fault approach will cause soaring premium costs either to come down or at least level off.

Supporters of no-fault don't contend that it is a perfect solution; only that it is better than what we have now. Indeed, there are a number of different no-fault plans.

Massachusetts, for example, has a limited no-fault law covering personal injuries but not property damage. It provides automatic medical benefits of up to \$2,000; pays up to 75 percent of loss of wages and salary; and allows no benefits for pain and suffering unless medical payments are more than \$500 or in cases of death, dismemberment, loss of sight or hearing, disfigurement, or fracture.

A better plan is the one now before Congress—the Uniform Motor Vehicle Insurance Act. It would set national standards and cover most personal injury costs. Those it didn't cover would be left to liability action through the courts.

This plan also would pay all medical costs not compensated by other insurance or programs; replace lost income up to 85 percent of salary or \$1,000 a month, whichever is less, provide cash payments of up to \$30,000 for surviving dependents of a wage earner who dies as a result of an auto accident; and allow no pain-and-suffering benefits. The no-fault proposals that permit unlimited lump-sum payments for pain and suffering are far less generous in other benefit categories.

This may not be a perfect plan. But it's infinitely preferable to what we have now, in its ability to deliver benefits when they're needed and in a less expensive and wasteful fashion. Federal legislation also is the answer, despite the Nixon administration's urging that each state act on its own. The latter course would take years longer because the insurance lobby always has had more clout at the state level.

As for the alarms expressed by the legal profession that the no-fault approach will leave those responsible for accidents unpunished, we believe this is an exaggerated fear. Those who are the cause of this kind of accident have often violated criminal laws, and they can be prosecuted regardless of how the victims are compensated.

**Mr. MARKUS.** We had one from the Cleveland Plain Dealer which agrees with the Kentucky Bar Association.

**Mr. SPANGENBERG.** I can give you a resolution of the Negligence Committee of the Ohio State Bar Association. But I hope, Senator Hart, you appreciate that we have not come here to oppose or to support S. 945 because we find that the bill has some good features and some bad. I hope our criticism has been directed only to those portions which we oppose and that you appreciate that we do support a good deal of the philosophy of that bill.

Senator HART. I am sure the record makes clear that that is the tone of the testimony.

(The statement follows:)

STATEMENT OF RICHARD MARKUS, PRESIDENT, AMERICAN TRIAL LAWYERS ASSOCIATION

Mr. Chairman, we appear before this committee on behalf of more than 25,000 lawyers, judges and law professors of the American Trial Lawyers Association. Our Association has traditionally fought as the people's advocate, the consumer's ally, the polluter's enemy, as the lawyer for the individual victim of our industrial society. Several members of this committee will remember the vigorous support by our Association for numerous consumer safety measures which would attack manufacturer indifference to safety—a program that necessarily reduces the number of cases and the legal fees available to our members. During the course of this testimony, we will outline our affirmative recommendations for reform, many of which will mean less legal fees for our members but which will fulfill the same objectives of the Hart-Magnuson Bill without taking away the legal rights of citizens.

By contrast, we must conclude that the principal supporters of the so-called "no fault" proposals are insurers that conspire to make greater profits at the expense of every motorist. After initial opposition to the "no fault" concept, some segments of the insurance industry changed their position overnight and jumped on the bandwagon in a desperate last-ditch effort to preserve and improve their profit-structure, while they make a last-ditch effort to prevent true social reform. We submit that the "no fault" concept has been misrepresented to the public and that there is not and has not been any public "ground swell" for "no fault" programs.

The Public Opinion polls demonstrate clearly that the majority of the electorate does not want a plan like the S.B. 945. When the University of Michigan Survey Research Center sampled public opinion for the Department of Transportation, they asked people what features of the present automobile insurance system were undesirable. The complaints were overwhelmingly about the industry practices: Cancellations, Non-Renewals, Raising Rates after a Claim, Insufficient Differentiation in Rates Between Good and Poor Drivers and Rising Costs. S.B. 945 is only incidentally involved with these complaints. Only 2% of the people dissatisfied with the present system made voluntary reference to the fault system. (D.O.T. "Public Attitudes" Report, Table III-2, p. 24)

When people were asked whether there should be a change in the present system of paying only when the injury-causing driver was *alone* at fault, 68% answered "No." When the minority 32% were asked what change should be made, 10% said that payment should be made without reliance on fault, but just as many (10%) said that comparative negligence was the proper change to adopt, making payment inversely proportional to fault. (D.O.T. "Public Attitudes" Report, Table VII-S1, p. 125). It is significant that none of those persons polled on this question volunteered the suggestion that the system ought to be changed by eliminating payment for general or intangible damages such as compensation for loss of sight, hearing, or other functions.

It is true that other questions in the survey indicated that for sufficient cost savings a substantial number of people would be willing to forego damages for "pain and suffering." The term "pain and suffering" is insurance company jargon for general damages, but to the public it means the physical sensation of pain, as other surveys have shown. A citizen might forego damages for the physical pain when a sharp piece of glass pierces his eyeball, but it is not conceivable that he would give up compensation for the loss of sight of that eye.

Indeed there is evidence to suggest that the majority of people do not realize what "no fault" is nor the extent to which the proposed "no fault" program would take away their civil rights. The most recent Gallup Poll showed that only about 4 out of 10 persons had ever heard of "no fault" and only about 18% surveyed were acquainted with the principal features of the "no fault" proposals.

Let me state the five legislative goals of my association, which relate to this subject. First, we seek affirmative social reform to help all victims of all accidents and injuries—a meaningful program of general national health insurance. Indeed, when such a program is adopted by this Congress, there will be little or no reason to discuss an automobile health insurance program called "no fault." We see no justification for greater public concern over the drunken driver who sus-

tains self-inflicted injuries than for the hapless housewife who falls down the basement steps or the innocent cancer victim. We believe that such true social reform should be funded by the general population. It should not be supported by a regressive victim taxlike "no fault" insurance which takes money away from the innocent in order to pay benefits to the guilty. It may be worth noting that national health legislation would probably mean a major reduction in legal fees, yet we support it. Its most bitter opponents are those same insurance companies that are terrified by its potential impact on their profit structures.

Second, we continue to seek state legislation which would provide greater equity for the relatively innocent victims of auto accidents. Thus, we have sought and continue to seek an elimination of the antiquated contributory negligence rule, and realistic liability insurance limits. We have sought and will continue to seek an elimination of meaningless immunities that render drivers free from responsibility to their guests, family members free from responsibility to their loved ones, and governments free from responsibility to their citizens. It is most curious that the very insurance companies that complain about inequities in the present legal system have been the traditional antagonists who have lobbied against every one of these reform measures to help the innocent victim.

Third, we have sought and continue to seek greater efficiency in the administration of claims. Although court congestion is largely a local matter in certain key metropolitan areas, we actively support arbitration, non-unanimous verdicts, and smaller juries in the less disastrous cases. We favor realistic quotas of judges based on population so that our courts can meet the staggering criminal docket and have some time left for the civil docket. We endorse legislation that would encourage insurers to make early payments long before any law suits, and we support legislation that would impose burdens on the tardy insurer by making interest run on those unpaid obligations at an earlier time.

Fourth, we ask government and industry to act more forcefully to bring about safety measures which would halt the carnage on our highways and reduce high claim costs and automobile insurance premiums. The public is demanding real legislation that will rid our highways of drunken drivers, require meaningful repeated operator examinations so that a driver's license is not a license to kill, and stiffen the backbone of courts by legislation that will require repeated traffic offenders to forfeit their licenses.

Finally, we seek greater economy and a realistic reduction in automobile insurance premiums. Insurers supporting the "no fault" plan are infected with the virus of wishful thinking when they make unrealistic and unsupported claims about supposed premium reductions. We charge that there is no truly reliable actuarial study to support the claimed premium reductions, that there is a good reason to believe that there would be major premium increases, and that any premium reductions obtained would be the result of reductions in benefits paid to innocent victims. Instead, we ask for realistic measures that will reduce the frequency and severity of human losses and property losses from highway havoc. Several years ago the president of a leading automobile insurer pointed his finger at the real problem when he said at a stockholder meeting, "What the industry needs most is a good five-mile-an-hour bumper for automobiles." Automobiles can be designed to withstand a ten-mile-per-hour impact without any significant damage. In contrast to the \$320 damage that a 1971 vehicle sustains in a five-mile-per-hour impact. Highway design for safety is not a textbook dream. Sensible titling laws can slash the frequency of auto thefts by making stolen cars less saleable. Although we have received some comfort from cooperation by part of the insurance industry in supporting these measures, we are sad to report that many insurers do nothing more than complain about the real source of rising insurance costs.

Neither legal nor insurance gymnastics will ever provide a lasting reduction in insurance premiums. Premiums can be cut only when we cut the losses, and that is the only humane way to approach that task. Remember that at least two-thirds of every insurance dollars goes to pay for sheet metal and glass, property damage—not flesh and blood, and personal injury. Most "no fault" plans do nothing to meet the property damage problem.

Then why do we say that the "no fault" proposals are a poor substitute for these reform measures? Why do we label them "retreat" rather than reform? A critical analysis of key sections of S.B. 945 is attached to this statement. Basically, we believe S.B. 945 addresses itself to guaranteeing easy defenses and easy profits for the insurance companies, but does not address itself to providing justice for millions of innocent victims of careless, reckless, bad driving. Every

other major nation in the free world has adopted a system of compensating automobile accident victims which provides medical payments and disability payments for all victims of every kind of accident, and, in addition, guarantees that in automobile accidents the innocent victim of another's bad driving will receive full compensation for all his injury, including payment for temporary or permanent disability, disfigurement, loss of function, and suffering. In these other countries, the payment of medical expense and disability benefits to the victims of all accidents—whether automobile, household, recreational or any other kind—is treated as a broad social problem.

It is government insured and government funded, simply because any type of universal social or welfare insurance can be handled at lower cost by the government. It would be as unthinkable to have compulsory private-company health and accident insurance as it would be to have compulsory private-company Social Security. The traditional tort system has been retained, and without exception, gives full justice to the innocent victim, requiring payment for all those intangible human losses incorrectly called "pain and suffering" by the American insurance industry.

The United States, which up to now has claimed to have the utmost respect for each individual citizen as a distinct person, would now dehumanize a special class of its citizens—automobile accident victims—and turn them into plastic people suitable for uniform processing through the insurance industry's computers.

For example, under S.B. 945, if a good driver on his own side of the road is hit head on by a reckless speeder on the wrong side of the road, he will not receive any payment for the destruction of his body if he loses any of the following: 1. one arm at the shoulder, 2. one leg at the hip, 3. the sight of one eye, 4. his total hearing in both ears, 5. total immobilization of his entire spine from head to tailbone for life. The crippled victim has no claim for bodily injury unless, under Section 2(9) of the Hart Bill, he sustains a permanent partial disability of at least seventy per cent, which would require the loss of at least two extremities, or both eyes. Even the loss of both hands by a young man would not be classified as 70% permanent partial disability by many authorities. It is unfair to pretend that the Hart Bill does allow some traditional tort recovery for serious bodily injuries and then qualify the standard so that an innocent man who is half destroyed by his injuries cannot make any claim at all.

S.B. 945 will be fair to perhaps 1% of all injured victims and unfair to only 99%. Half-Pay, "No Fault" plans pretend they are truly just and fair to each individual citizen.

The chief claim of the proponents is that they are cheap—or can be if the benefits are kept small enough. How cheap "No Fault" will be depends on how much will be paid. It is obvious that premiums could be reduced as much as two-thirds if the insurance company paid out no benefits at all, spending the whole premium for commissions, salaries, overhead and reserves.

The American Trial Lawyers Association is indeed concerned about the cost of insurance, but it is even more concerned with the value the consumer will get and the quality of justice each citizen will receive.

The American Trial Lawyers Association cannot endorse the Administration's position reported by Secretary Volpe. His request for a nebulous "sense of the Congress" resolution calling for some undefined legislation and threatening some unstated Federal retaliation denies the essence of any Federal government. Further, to the extent that the Administration appears to endorse alleged compromise "no fault" legislation, it is asking us all to compromise with injustice. We see no reason to seek retreat instead of reform. We see no reason to seek a "little" injustice when we can have complete justice. We oppose "no guilt insurance" that simply trades your rights for someone else's wrongs. With "no fault" insurance, you pay more and get less—less equity, less justice, less reparation for pain, suffering and economic loss. Only the guilty will get their money's worth.

In summary, we do not object to welfare-oriented, social-security style, first party-health and accident benefits plans. Motorists ought to be allowed to buy all the health and accident insurance they want. We would support without hesitation a national health insurance plan. We do question whether all drivers should be compelled to buy health and accident insurance from private insurance companies at whatever rates they choose to set, without government control over those rates.

We do vehemently protest against any plan which is deliberately designed to take away a substantial part of the compensation the innocent victims rightfully deserve in order to create a fund to pay the bad drivers who injured them. It is not the American faith to create injustice for the deliberate purpose of depriving the innocent, crippled victims of bad driving. The driver or passenger who is in the right should not be penalized for the benefit of the driver who is in the wrong—nor for the benefit of private insurance carriers. S.B. 945 is unjust, not because of the limitation on benefits it gives, but because of the rights it takes away.

In conclusion, we appreciate this opportunity to present the position of the American Trial Lawyers Association in regard to S.B. 945 and all other proposed no fault programs—a position we believe is strongly in support of consumer rights. While the objectives of this bill—to reduce costs, to speed up claims and to provide automobile victims quick benefits—are all laudable, the enactment of “no fault” will not fulfill these objectives. Several weeks ago, Justice Thomas C. Clark, former Attorney General and U.S. Supreme Court Justice, characterized the “no fault” plans as “no fair for the public.” We agree with him.

We are not against change, but we are against untested and hastily designed change just because change is needed. We are confident that the program of national health insurance and court reform supported by our Association represents a positive and practical solution to the problem within the framework of the present tort liability system.

#### ANALYSIS OF KEY PROVISIONS IN SENATE BILL 945

The following analysis of Senate Bill 945 is pertinent to our position and to the inherent weaknesses of the bill itself.

1. Section 2 (9) defines the term “catastrophic harm” to mean death, permanent partial disability of 70% or more, or disfigurement that is “permanent, severe and irreparable.” Since this is the term which authorizes any remedy beyond the first-party insurance provisions, its significance is obvious. Unless the standard provided by this definition is met, there will be no compensation for disability, disfigurement, dismemberment, prolonged intractable pain, or loss of enjoyment of life. Further, as a later section makes clear, unless the standard specified by this definition is met, there will be no compensation for economic losses involved in lost earning capacity (which is explained below as differing markedly from the wage replacement provisions of the Act) or the portion of wage replacement not provided by the Act (also explained below).

A standard of 70% permanent partial disability would exclude at least 99% of all injured motorists, according to all data available to us. We know that the D.O.T. found that only 2/10th of 1% of motor vehicle victims sustained an injury which caused a loss of earnings that extended beyond 2 years. Discussions with persons involved in processing workmen's compensation claims indicate that substantially less than 1% of injured workers are found to have more than 70% permanent partial disability. Although there could be some difference of opinion as to the extent of disability which meets that standard, certain recognized reference sources give us some guidance. By reference to the official publication of the American Medical Association, we find that the following conditions are each rated as constituting less than 70% permanent partial disability; amputation of the leg at the hip, amputation of the arm at the shoulder, 100% restriction of spine movement. See “A Guide to the Evaluation of Permanent Impairment of the Extremities and Back,” A.M.A. Journal (February 15, 1958). The International Association of Industrial Accident Boards and Commissions would rate the loss of an arm at the shoulder or a leg at the hip as less than 70% permanent partial disability for any person 53 years old or younger. That same Association would rate the following conditions as constituting less than 70% permanent partial disability, regardless of age: loss of hearing in both ears, loss of an eye. See Bulletin of the United States Bureau of Labor Statistics No. 359, Page 17.

The term “catastrophic harm” is also defined to include disfigurement that is “permanent, severe and irreparable.” With modern plastic surgery, there are very few disfigurements that cannot be substantially improved—if enough plastic surgical procedures are undertaken. In some cases, there may be 20–30 subsequent surgical procedures. One wonders whether they would leave a condition that is considered to be “permanent, severe and irreparable,” since there would

be no compensation whatever for all the human loss that occurred up to the point in which the surgical improvement was sufficient to remove it from that description.

This standard is drastically more severe than the standard imposed by any workmen's compensation statute—anywhere in the United States. Every state workmen's compensation statute provides payment for permanent partial disability in recognition of the human losses and the loss of earning capacity (discussed below). This statute effectively ignores all such losses.

2. Section 2(10)(C) defines economic loss to include "an amount equal to 85% of the monthly earnings at the time of the injury or \$1,000, whichever is less . . . provided, however, that in the case of injuries such period shall not exceed 30 months (36 months in the House Bill 7514)." This means that the insurance provided by the statute would not pay 15% of the income loss sustained by any victim, would not pay any income loss beyond the maximum period of 30 months (or 36 months), would not pay any income loss exceeding \$1,000 per month, and would not pay any income loss beyond the pay rate at the moment of injury.

Presumably, the 15% reduction was based upon an attempt to recognize federal income taxes which would reduce the employee's earnings and which would not be charged against these payments. For people in larger income brackets, that might be extremely favorable. However, for people in lower income brackets, this represents a drastic reduction in the amount of income which would be replaced. Based on 1971 federal income tax rates, a married man with three children who uses the standard deduction would not pay 15% of his total income as taxes unless he earned at least \$18,000 per year. Since people in those earning brackets typically have higher deductions than a "standard deduction" (interest on house payments, other taxes, etc.) most people earning less than \$20,000 per year do not ordinarily pay as much as 15% of their total income as federal taxes. This means that most Americans, and *particularly lower income Americans*, will receive substantially less than their full wage replacement under this Bill. Of course, those who earned more than \$1,000 per month will not receive that excess under the insurance provided by the Bill.

In addition, there will be no payments after the expiration of the statutory time limit of 30 months (36 months). This might not seem significant, since we know that every, very few people will lose wages consistently from the time of the accident for 30 to 36 months thereafter. However, many people will sustain injuries will cause them to lose wages in a subsequent period of hospital care or disability, long after they have returned to work. In other words, there will be many people with serious injuries who have an initial period of disability and lost wages, who then return to work for an extended period of time, and who subsequently are again forced to have disability and lost wages. If that ultimate period of disability extends beyond the 30 months (36 months), there will be no payment from the insurance provided in the act. To our knowledge, no workmen's compensation statute in the United States is this severe.

Finally, the most drastic denial of payment for economic loss relates to loss of "earning capacity." Any person who is temporarily unemployed or earning at a rate lower than his usual income will have his wage replacement frozen at the rate he was earning when the accident occurred. Thus, a student, a housewife, a retired man with occasional jobs, or a man between jobs will receive nothing for lost wages—since they were not earning anything at the time of the accident. If a man is at a temporary job with a lower earning rate, he will be frozen at that earning rate for the future period of lost income. We cannot imagine a more cruel method of determining income loss. This language is a drastic change from the language previously used in Senator Hart's bill in the last Congress (Senate Bill 4339) which provided for wages that would have been earned over that future time interval. This change has a particularly horrendous effect on lower income groups who are often in the unpleasant circumstances of being "between jobs."

3. Section 2(12)(A) provides that the insurance benefits provided by the Act will be excess above "any benefit or payment received, or entitled to be received . . . under any private or public insurance or plan or other source of benefits (with stated exceptions discussed below)." This means that all fringe benefits that have been earned by union members through difficult bargaining struggles, as an alternative to wage increases, will be pirated to reduce the insurance company's payments. The union member who has earned these "fringe benefits" by his sweat will have them deducted from his insurance payments when he is injured. In effect, he will pay for the same benefits twice, and receive them only

once. This applies to all union-negotiated health benefits, wage continuation plans, or hospitalization plans. In fairness, it should be recognized that a group policy written under the provisions of this statute might permit some slight premium reduction where such fringe benefits exist (usually estimated by proponents at 6%-8% on the personal injury coverage only). If that occurs, the very slight reduction will still not counterbalance the loss of benefits for very substantial premiums that are being paid.

4. Section 2(12)(A)(v) provides that the insurance under the Act will not be excess over "any private or public insurance or plan or other source of benefits" if that other source explicitly provides that the insurance described in this statute will be paid first. As a practical matter, this could not have any meaning for a substantial period of time during which all other insurance policies covering the same losses would have to be rewritten. When that rewriting eventually occurs, it is obvious that the premiums for the insurance provided by this statute would go up. In that situation, the premium provided by this statute would no longer be a parasite on other insurance and the costs would have to reflect the fact that it was standing on its own two legs.

Reliable estimates establish that medical expenses represent 53% to 61% of all economic losses of motor vehicle accident victims. Therefore, when the medical expense part of the economic loss is removed entirely from the automobile insurance policy, only a minority of the economic losses would be covered by this statute. We have reason to believe that the health insurance companies want to hold onto this part of the market, so they will try desperately to make any national health program provide benefits that are *excess* above the automobile insurance coverage in this statute. This means that any savings in administration that is obtained by national health insurance will be lost for the automobile insurance injuries, so those companies can continue to make their profits on those injuries.

5. Section 3(b) forbids any state to require liability insurance by a compulsory insurance law or a financial responsibility law. When we see that in Section 5(b) liability insurance is an optional coverage for the insured, this means that there will be no federal or state requirement that anyone carry liability insurance of any kind. Therefore, the right to obtain damages for "catastrophic harm" are not only limited but meaningless, since they must be collected from someone who does not carry any liability insurance at all. So, his right to collect for "catastrophic harm" could well be a cruel hoax.

6. Section 4 is the "tort exemption" section that prohibits any recovery beyond the basic insurance provided by the statute unless there is "catastrophic harm." This means that unless there was at least 70% permanent partial disability there would be no right to seek any recovery for economic loss beyond the statutory amounts (wage loss not covered by the statute, loss of earning capacity) and no ability to recover for the human losses of disability, disfigurement, dismemberment, long periods of pain, or loss of ability to carry on life's pleasant activities. As explained in the discussion of Section 2(9), this is a grievous restriction on the ability of the innocent victim to obtain full payment.

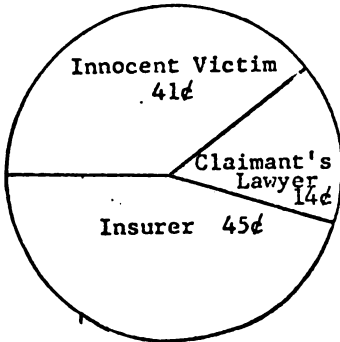
7. Section 5(a)(7)(A) direct the Secretary of Transportation to establish higher premium rate classification for commercial vehicles larger than passenger cars, in accordance with their higher injury-causing propensities. As we all know, busses and trucks cause more injuries and pay higher premiums today. This Section was removed entirely by Congressman Moss from House Bill 7514, creating a major subsidy to the trucking and bus industry. Obviously, without such a provision, all other motorists will pay higher premiums to absorb the amounts that are no longer being paid by these larger commercial operators.

8. Section 5(b) describes the "optional" catastrophic harm liability insurance. As explained before, this means that no one will be required to carry liability insurance. This Section also provides for a meaningless uninsured motorist coverage. The uninsured motorist coverage permits the insurance company to provide an optional insurance for the motorist that would pay him for "catastrophic harm" losses if he is struck by an insured motor vehicle. However, the term "uninsured motor vehicle" is defined by Section 2(2)(B) to be a vehicle that does not have the insurance required by the statute. In other words, if someone carried the required first-party insurance and no liability insurance whatever, he would be an *insured* motorist, so the uninsured motorist provisions would be inapplicable.

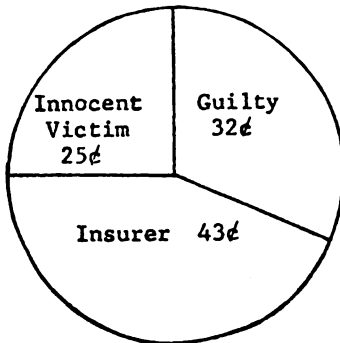
9. The impact of this legislation will be particularly drastic for low income and poverty sectors of our society. Such persons are commonly operating uninsured cars, even in compulsory insurance states because they can't afford to pay insurance premiums. With this legislation, they will lose virtually all third-party

protection as tort victims, and they will be denied any first-party protection Section 5(A) (3)A—they will have no protection. Those who seek to draw a parallel to workmen's compensation forget that employee benefits are an automatic incident of employment, but auto insurance is not an automatic incident of operating a car.

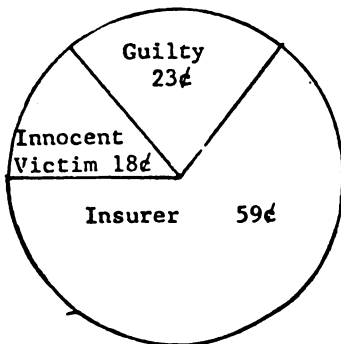
WHERE THE PREMIUM \$ GOES



TORT SYSTEM



"NO FAULT"  
(AIA VERSION)



"NO FAULT"  
(MASS. 3 MONTHS  
EXPERIENCE)

## NOTES TO EXHIBIT

The Exhibit reflects the distribution of the premium dollar under specified conditions. For the "tort system" the payment of \$.55 per premium dollar is reflected in the actuarial studies "Report of Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations (New York: American Insurance Association, 1968), Exhibit 1, Sheet 2". The "claimant's lawyer's portion of \$.14 is derived as 25% of gross loss payments. See D.O.T., *Economic Consequences*, p. 48, Professor Keeton estimates the net paid to victims as 44% of the total premium, so the values suggested here are conservative. See D.O.T., *Final Report*, p. 51.

For the "no fault" (AIA version) the portion of the premium attributable to loss payments and insurer operations are reflected in the same study by the American Insurance Association referred to above. The division of payments between guilty and innocent victims correspond with the conclusion by the DOT that only 45% of seriously injured victims obtained any compensation from the tort system. DOT, *Economic Consequences*, pp. 3, 37. Seriously injured persons consistently made a higher percent of claims and a higher percent of serious injuries led to some payment. DOT, *Economic Consequences*, p. 49. No portion of the premium dollar is allocated in this example to claimant's lawyers, although it is presumed that some expense would be incurred for that purpose. For these reasons the share allocated to the innocent victim may well be overstated.

The last drawing depicts the Massachusetts experience. It is derived from the same data and considerations described above, together with the report by Governor Sargent as to loss payments for the first three months of 1971. See New York Times, April 24, 1971. Loss payments decreased 36%, though premiums had been reduced only 15%. Thus loss payments were 35.2% of the prior premium level (64% of 55%), or 41% of the new reduced premium level (33.5% divided by .85). That 41% can again be divided between innocent victims (45% to 41%) and guilty (55% to 41%). Again, the share of the innocent victim is probably overstated because no share has been allocated to fees for claimant's attorneys.

Senator HART. Apologizing to others who have sat here this morning, I regret that we will have to recess. I have a luncheon that was arranged largely at my request with some mayors, and it has been in session for 35 minutes, and I simply must attend.

Let me suggest a recess until 2:30 p.m.

(Whereupon, at 12:50 p.m., the hearing was recessed, to reconvene at 2:30 p.m., this same day.)

## AFTERNOON SESSION

Senator HART. The committee will resume.

Senator Cook has asked that we continue and hopes very much to be able to get here before you conclude. He would join me in welcoming all of you.

May I suggest that you proceed in any fashion that you find most expeditious.

**STATEMENTS OF EDWARD W. KUHN, PAST PRESIDENT, AMERICAN BAR ASSOCIATION, MEMPHIS, TENN.; JUDGE JOHN T. REARDON, CIRCUIT COURT, QUINCY, ILL.; LOUIS G. DAVIDSON, PAST CHAIRMAN, ABA SECTION OF INSURANCE, NEGLIGENCE, AND COMPENSATION LAW, CHICAGO, ILL.; AND THOMAS E. DEACY, JR., KANSAS CITY, MO.**

Mr. KUHN. Thank you so much, Senator Hart.

May I introduce the panel of the American Bar Association. This is Judge John T. Reardon seated to my immediate right. He is chief judge of the 8th judicial circuit, Quincy, Ill. He is immediate past pres-

ident of the National Conference of State Trial Judges. He represents the American Bar Association.

Seated to his right is Mr. Thomas Deacy of Kansas City, Mo., chairman of the Special Committee on Automobile Accident Reparations of the American College of Trial Lawyers.

To my immediate left is Louis Davidson of Chicago, Ill., immediate past chairman of the Section of Insurance Negligence and Compensation Law of the American Bar Association.

My name is Edward W. Kuhn of Memphis, Tenn. I am chairman of the Section of Insurance Negligence Compensation Law Special Committee To Achieve Justice Through the Adversary System.

We have been designated by the president of the American Bar Association to appear before you on this important subject.

I might explain to you briefly what the American Bar Association is. It is composed of approximately 150,000 lawyers, judges, and law professors. It is the largest legal organization in the world. We have a house of delegates composed of 291 members representing all of the State bars, most of the large local bars, and approximately 20 or 21 affiliated organizations. Therefore we think that because of the composition of our house of delegates we can speak authentically for the entire legal profession in the United States.

We have had a vital interest in the auto insurance, this so-called legislation pending in Congress and we have given it much attention. A committee was appointed several years ago and we composed a report which was submitted to the house of delegates and was approved unanimously, that is, our recommendations were approved unanimously by the house of delegates and, of course, that represents the position of the American Bar Association.

We treated this subject very comprehensively from practically every angle and we had 38 meetings of 2 days' duration each, so I assure you that we have given this serious and very, very close attention because it is so vital to the general welfare of the people of this Nation.

We adopted a resolution. The fundamental principle, and I will read it to you because I want it to be clear, is as follows:

The present system for providing reparations for those injured in automobile accidents, based upon the concept that if there is no fault there is no liability and relying upon an adversary method of trial before a court or jury as the means of determining liability and the amount of damages be retained as the basic legal structures for dealing with such cases but that the following proposals for further study, changes in, additions to, and modifications of such system should be further considered.

Then our report of approximately 250 pages, which I understand has been filed with this committee, contains about 60 committee recommendations for improving the present tort system.

We have recommendations as to the delay in the courts. Twenty-four of those recommendations, we think, can improve court procedures.

There are recommendations as to the substantive law, seven in number.

There are recommendations as to the law of damages in automobile cases, four in number.

There are recommendations as to certain categories of persons who are injured in automobile accidents, three.

Recommendations as to cost, eight.

Recommendations as to automobile insurance, four.

There also are recommendations to deter dangerous driving, promote highway safety, and so forth.

Senator HART. Mr. Kuhn, for the record, the report to which you make reference has been provided the committee and is a part of our files.

Mr. KUHN. Thank you so much.

I won't go into all of those recommendations because I understand each of our witnesses is going to take only about 5 minutes of your time. We think those recommendations contain the lawyers' plan to solve this problem.

Our general objection to no-fault legislation is that there is no great public demand for a change. We are familiar with and cognizant of the surveys conducted by the Pennsylvania Chamber of Commerce, Market Facts, Inc., the State Farm Mutual Insurance Company, insurance agents, Drake University, the University of Michigan, which has a very fine survey as you Senators are well aware, the Minneapolis Tribune and even the Department of Transportation has indicated that the majority of the public are satisfied with the present system.

We think these surveys are the answer to the criticism that our position may be in the interest of the lawyers individually.

We think that before any legislation of this type is enacted that the public should be given the information as to what they are giving up. For instance, their claims for pain and suffering, for loss of life's pleasures, inconvenience, loss of limb, disfigurement, hearing, consortium, prenatal injuries, impotency, right to catastrophic losses and many other losses, in return for a certainty of payment of some of their hospital bills and some loss of earnings.

We think the no-fault plans—and I will not single out a particular one but we are addressing ourselves to your particular plan, Senator—discriminate against a large segment of our population such as the housewife, the minor, the elderly, the disabled, the unemployed, the married man with a large family and many other segments.

We think they are also discriminatory against the laboring men who have their own health and accident protection. They have these collateral benefits. Many of these plans would limit the amount of recovery in proportion to the amount of the available collateral benefits available.

There is no proven certainty that costs to the premium-paying public will be lowered. We think that most of these no-fault plans would require a person to carry two policies, one for no-fault and one for fault.

There are many claims by the actuaries and our studies show that they are in fundamental disagreement. Many eminent statisticians contend that the costs will increase under a no-fault plan.

The no-fault plan will have great impact upon the industry itself. You will find that a great many of the small and efficiently run companies will pass out of the picture because only the giants can have the facilities and can withstand the rating uncertainties and the retraining of personnel and all of that under a no-fault plan.

We do not accept the contention that automobile cases are clogging the courts. We have gone into that question very closely. We had

several judges on our committee, one of them being Judge Reardon, and Judge Horace Gilmore from Detroit whom the Senator may know.

Senator HART. Indeed I know him.

Mr. KUHN. He was on our committee.

We think that as far as the courts are concerned there are other culprits more prominent than the automobile cases. For instance, the criminal cases and all of these facets such as habeas corpus and so on. We don't think that there is anything to the argument that automobile cases are clogging the courts.

It would be difficult for any lawyer to leave this subject without some comment that goes beyond the economic realities involved.

The law, and all those involved in it, can view with reasonable pride the advances in individual rights which have been made in the last 20 years. That a correlative growth in individual responsibility is often lacking seems all too obvious.

A large part of the American population has abandoned the belief that one is responsible in the next world for what he does here. We are now busy considering plans which will tell the same people that they aren't even responsible in this world for their actions.

All the present no-fault programs contemplate one further abandonment of individual responsibility.

It is our position, briefly, that the present system should be retained. But recognizing its inequities and deficiencies we have made 60 specific recommendations on how it can be improved and we think with the improvements it can serve the American public.

Thank you so much, Senator, for allowing me to speak.

Senator HART. Thank you.

I was struck by your suggestion that in addition to those who are insisting that there is no ultimate responsibility, that this is part of a package to relieve temporal responsibility.

Mr. REARDON. Mr. Chairman, Senator Hart, I too want to express our appreciation for the opportunity to appear here. I would like to mention that in 1968 the Special Committee on Automobile Accident Reparations of the American Bar Association began its study and evaluation of the existing system of providing reparations for those injured and damaged in automobile accidents. This system is one based upon the concept that if there is no fault there is no liability and relied upon an adversary method of trial before a judge or a jury and judge as a means of determining liability and the amount of damages.

After extensive inquiry, research, and public hearings the committee determined that the fault concept should be retained as a part of the legal structure for dealing with these cases, but that numerous modifications should be considered. Mr. Kuhn has covered these recommendations and I will not repeat them.

I suggest to the committee that they are all contained in the report which you have received into evidence here.

About 2 weeks ago the American Bar Association appointed a new special committee to work in this area. Its purpose is to assist in presenting the association's views on this subject and to cooperate with interested sections and committees of the American Bar Association and with State and local bar associations to bring about enactment of legislation to improve automobile accident reparations procedures.

The American Bar Association is the major voice of lawyers in the United States. Despite evidence that may have been previously given, the American Bar Association does not have a closed mind to the frailities and defects of the existing system. At the time of the report of the American Bar Association Committee on Automobile Accident Reparations the extensive research that has been provided by Congress to this committee was not available.

The change that is being suggested by the pending legislation is a drastic one, and reasonable men, whether they be legislators or lawyers, or both, will approach the plan with caution.

It is unquestionably true that backlogs do exist, particularly in metropolitan areas. It is also true that in some metropolitan areas (Miami, Fla.), and in less urban areas of the country, there are no appreciable backlogs. There are hundreds of trial courts around the country which are as current as they should be.

In these areas, efforts that were previously made to speed up procedures are being slowed down because there is such a thing as a trial court being too current. (Determination of injury permanency cannot be made and counsel have had insufficient time to prepare.)

A typical example of this situation may be found in the State of Illinois where an enormous backlog exists in the metropolitan area of Chicago, but in the area of downstate Illinois, where approximately one-half of the 10 million people of that State reside, there are no worrisome backlogs in the trial courts.

Trial judges throughout the United States vary in their judgment as to the percentage of judge time that is required to handle tort cases. I have an uneasy feeling about the statistics in this area. They vary so greatly they seem to lose credibility.

Some judges feel that as much as one-third to one-half of their judge time is used in handling tort cases. Other judges disagree.

Studies were made in the superior court in Boston which indicate that automobile accident cases did not represent as substantial a part of the trial calendar as was believed. In my own case, and in my own court, we estimate that 50 percent of judge time is used in the handling of criminal cases. Domestic relations and automobile accident cases share secondary importance.

Trial judges cannot help but wonder as to the preoccupation that seems to be attached to auto accident cases since the same concern does not seem to exist for other tort cases and for criminal cases.

It would seem to me that if we are going to enter into a program that will make whole the victims of automobile accidents, then logically we might well consider a more comprehensive plan involving the health, medical expense and loss of employment of all accident victims. Individually, many of us who oppose such a broad concept wonder as to the validity of preferring the victim of the automobile accident.

As an individual I cannot bring myself to the point of saying that I oppose no-fault plans. We already have no-fault plans in our system. Collision insurance and medical pay are examples.

If no-fault plans will work and if the cause of justice is served, then certainly judges throughout the United States will support them.

I would like to emphasize that the American Bar Association has an open but troubled and critical mind on this issue. The appointment of this committee is an evidence of its concern.

The American Bar Association has in the past, and I am sure will in the future, respect its solemn obligation to the advancement of the public interest.

It is in the great American legal tradition to support even unpopular causes if they contribute to the public welfare. Surely, reason and prudence direct us to proceed cautiously. Let us learn the results in Massachusetts. Let us withhold judgment until after sufficient time has elapsed and ample experience has been gained for reasonable people to formulate considered judgments.

I certainly am no expert in the field of no-fault as distinguished from fault concepts, but I am convinced it is foolish to believe greater benefits can be provided at a lesser cost.

I also am concerned about the distinction that is made in most plans between the small and the large case. This would seem to me to require two types of protection—one, a first-party type to cover the small claim, and, second, the policy to cover possible losses suffered within the tort system. It seems doubtful that this would be less expensive.

I would be the last to suggest that traditional methods of operating courts have not contributed to court delays. There are many of us who have, for years, urged and worked desperately to modernize and speed up judicial procedures to the end that we can cope with the ever-increasing volume of work. It seems to me that the suggested proposal is one that will provide lesser benefits at a lesser cost.

Again I say I do not disagree with this concept, but I do disagree with those who would sell this proposal to the people on the theory that they are going to get something for nothing.

I also find it difficult to agree with the idea that the fault concept is not relevant to damages or injuries arising out of an automobile accident.

It is my impression that juries do act as the community conscience and are able to reach reasonable judgments in this regard, and it seems to me that even the proponents of the no-fault system must agree with that because they recommend the retention of the jury trial system for the more serious types of automobile tort cases.

The same can be said of the proponents again with respect to suffering and pain. They would eliminate it from the small case as an element of damage, but they would retain it for the more serious case. Somehow or another this logic escapes me.

Although I was a member of the American Bar Association Committee on Automobile Accident Reparations, I do not agree with their failure to recommend the Philadelphia arbitration plan. This plan will reduce delay in the disposition of claims and will relieve the court of congestion.

My inquiry causes me to believe that the plan works extremely well and that few cases are appealed for trial de novo, and of those appealed most are settled without trial.

Certainly we can urge the adoption of the comparative negligence doctrine of Wisconsin and eliminate the doctrine of last clear chance and assumption of risk.

As was recommended by the American Bar Association Automobile Accident Reparations Committee, we should do away with charitable, governmental, and intrafamily immunities where they exist. We should have mandatory liability insurance with realistic limits.

I personally feel that we should require increased first-party medical payment coverage. A \$2,000 amount to encompass loss of wages to be deducted from any future award would have a chilling effect on subsequent legal action.

We certainly cannot continue the unfortunate automobile guest statutes which came into being as an overreaction to instances of collusion. We should insist that uninsured motorist coverage be included in our policies.

Most important of all, we should realize that in a sense we are dealing only with the symptoms of the problem that besets us. The language of Justice Blackmun in a recent concurring opinion in the Supreme Court of the United States (*Tate v. Short*) highlights this thought. He was speaking of using jail sentence as punishment for traffic offenses. He said :

Eliminating the fine whenever it is prescribed as alternative punishment avoids the equal protection issue that indigency occasions and leaves only possible Eighth Amendment considerations. If, as a nation, we ever reach that happy point where we are willing to set our personal convenience to one side and we are really serious about resolving the problems of traffic irresponsibility and the frightful carnage it spews upon our highways, a development of that kind may not be at all undesirable.

Our sincerity should motivate us to tighten up on the issuance and renewal of drivers' licenses and make examinations for drivers' licenses meaningful. Should we consider implied consent laws on a national level? Should we insist upon State implementation of the requirement of the National Highway Safety Act?

Our actions here may test and grade our sincerity to the cause of safety on our highways and may relieve us of some of our concerns in the field of reparations.

Senator HART. Thank you.

I think for the record it would be useful if you would state briefly the nature of the jurisdiction of the court over which you preside.

Mr. REARDON. It is a court of general jurisdiction. It is the Eighth Judicial Circuit in Illinois. It comprises an area in west-central Illinois about 120 miles east and west and about 110 miles north and south. It has eight counties in it. We have 11 judges and four magistrates in our circuit.

Senator HART. Thank you very much.

Mr. DEACY. Mr. Chairman, my name is Thomas E. Deacy, Jr., of Kansas City, Mo. I am a practicing lawyer, a member of the American Bar Association, a fellow and regent of the American College of Trial Lawyers, and chairman of the special committee on automobile accident reparations of the college. I am honored to appear here with the distinguished representatives of the American Bar Association.

The American College of Trial Lawyers is an honorary association of trial lawyers from each of the 50 States numbering approximately 2,300. Fellowship in the college is extended by nomination and election in a highly selective process. Membership is limited to 1 percent of the lawyers in each State and in most States is less than that.

The membership of the college includes lawyers who represent both plaintiffs and defendants, lawyers who handle litigation in all fields in trial and appellate courts and administrative tribunals, both civil and criminal.

The scope of advocacy practiced by the fellows of the college extends far beyond the tort reparations field. The college addresses itself seriously to studies and reports concerning matters which relate to the public concern and the administration of justice.

Last year its report and recommendations on disruption of the judicial process set the pace for a reasoned approach to the protection of the rights of both the criminal defendant and the courts.

The college's concern with problems relating to the public interest and the impact of the law upon the public prompted its study and report and recommendations on automobile accident reparations.

This report, Senator Hart, I believe, has been furnished to the committee and I ask that it be included in the record.

Senator HART. It has been received and will be made a part of the record by reference.

Mr. DEACY. The report and recommendations of the special committee on automobile accident reparations were approved by the board of regents of the college on March 11, 1971, and ordered printed and distributed among the fellows and other interested persons. I offer the report for the record of this hearing.

The basic recommendations of the report include study of Senate bills 4339, 4349, and 4341, then pending in the 91st Congress.

The basic recommendations of the committee were against the adoption of any of the current proposals for auto plans and firmly opposed to the intrusion of Federal law into the area.

As to the latter, we believe that the States are important laboratories for social experiment in the field of auto reparations. We believe that evaluation of auto plans involves assumptions about costs, claims consciousness, fraud, deterrence, settlement behavior, lawyer behavior—upon all of which experience with actual operation will shed some light.

The change from the common law to a plan would be irreversible and it would be imprudent to change the tort and insurance law everywhere in one single giant step.

We found compelling each of several considerations against current auto plans:

1. We are not persuaded that auto accidents present a case requiring special treatment and departure from the principles which control in other common law tort situations.
2. We see no reason to single out the auto accident for treatment as a special case requiring social insurance.
3. We believe that any plan will either cost more or lower substantially the benefits the accident victim may now receive at common law.
4. We firmly believe that the tort law still has a substantial role to play in the moral culture of our society; that the public should not surrender lightly the principle of personal responsibility in the auto case.
5. We believe that the public should be fully apprised of the effect of the proposed shift from the format of third party liability insurance to that of first party accident insurance and the fact that such a shift would transfer the cost burden from the individual as an accident creator to the individual as an accident victim.

May I add also that your candor, Senator, in the statements that preceded the introduction of your bill in the congressional bill acknowledges that there would also be a social shift of the cost of insurance from the low-wage earner to the high-wage earner, and the emphasis, of course, of the first party plans is that it is the risk of the person as an accident victim and not an accident creator which determines whether he is a good risk or a bad risk.

6. We believe that modification of the collateral source rule as an underpinning for the financing of an auto plan tends to conceal from the ordinary citizen that he may be getting back under a plan only the benefits of insurance he has already paid for.

7. We believe that the Massachusetts experiment may provide valuable experience for further study and evaluation.

8. Our recommendations against plans at this time include the two-level plans which preclude or diminish common law benefits. Their advantages are: they will cost more unless the award level is diminished so that even the person eligible to use the tort action left over will receive less than he would have at common law; that the tort actions left over will be trivial or the level of compensation to all victims will be trivial; that the criticized inefficiencies, fraud, arbitration and delays will remain and additional coverage will be required.

We believe that the negligence principle and the determination of fault are capable of judicial application and are being applied meaningfully to the auto accident. There is impressive agreement to this among seasoned lawyers and judges.

We also believe that pain and suffering or general damages for injury involving the elements of discomfort, inconvenience, limitation of earning capacity both present and future, disruption of participation in avocations and pursuit of pleasure, all make rational components of damages the availability of which makes the law more just and humane in its handling of personal injury.

A principal consideration against the plans is that they do not even purport to meet the major expense of the automobile reparation system, that of the cost of repairs to automobiles.

Approximately two-thirds of the premiums and loss payments go for the repair of damage to automobiles; thus, any plan which treats only the personal injury aspect of the problem relates to only one-third of automobile insurance expense.

As a strategy for reducing staggering property damage costs we enthusiastically recommend support for standards of automobile manufacture to eliminate property damage and injury resulting from low-speed collisions.

I understand that S. 976 has this purpose and we are wholeheartedly for it.

We found that the handling of the small claim is the target of most of the criticisms of the functioning of the system. They are overpaid due to the nuisance factor, the costs of processing them are disproportionately high, payments and costs are inflated by attorneys' fees, and they aggravate court congestion.

Each plan attempts to eliminate the small claim and thereby these problems. However, in so doing it would also irreversibly alter present tort remedies. We believe that these criticisms can be largely met, yet the benefits of the tort system be retained without increasing costs.

We recommend that the familiar medical payment coverage contained in approximately 80 percent of auto liability policies today be expanded and revised by State law as follows:

1. Offer of such coverage be made mandatory, perhaps even compulsory inclusion of such coverage.
2. Coverage be extended to the insured, members of his household, and passengers in his automobile.
3. Coverage be expanded to include wage and income loss as well as medical expense.
4. The limits for the combined medical expense and economic loss be set at \$1,500 per person covered; and I emphasize this is a strategy directed to the small claim.
5. The insured may reject such coverage, but only in writing. This provision applies in uninsured motorists coverage and only 2 percent of the people in California, and I assume of the other States, rejected it.
6. The insurer would be entitled to a credit for the amount paid pursuant to this coverage to any claimant who makes a tort claim against the insured or driver of the automobile covered by the policy.
7. The insurer would also have a lien, to the extent of payment under this coverage, upon any tort recovery that a claimant made against another person.

We believe that such reform of the automobile insurance system would have the advantage of affording more injured persons compensation for their whole economic loss. This would add little to insurance premiums and we believe that such additional costs would be offset by the savings which would result.

The number of small tort claims made would be substantially reduced. The injured person who recovered full economic loss would now be disinclined to engage an attorney and pursue a tort claim.

The lien which the insurance company has on any tort recovery to the full amount of the medical and economic loss paid would so diminish the value of the tort claim to the claimant or his prospective attorney that the engagement of counsel and the bringing of suit would be deterred. Court congestion would lessen.

As first-party claims, these claims can be handled with less expense than tort claims. Under this method the pressures to overpay the small claim would be reduced and the nuisance value factor would be largely eliminated.

This suggestion is a modest strategy to supplement the present system with an increase in first-party insurance which it is hoped will serve to mop up a major part of the small claims. The increase in insurance would be voluntary and the structure of the tort system would be left intact.

The change would not be irreversible. The expectation for improved efficiency in the system could be tested against experience.

The report also recommends further reform of the existing tort law—liability insurance reparations system and improvement of its administration in the courts.

We recommend changes by the States of the tort law, where applicable, designed to close gaps in compensation: the adoption of the comparative negligence doctrine of the Wisconsin type; the elimina-

tion of automobile guest statutes, and of charitable, governmental and intrafamily immunities.

If these changes are made, the only victims of automobile accidents who will not be fully compensated in tort are the driver of a car involved in a single-car accident and the victim who is himself the predominantly negligent party to the accident.

We are not persuaded that the protection of these two groups of accident victims from themselves warrants altering the basic architecture of the common law of torts.

To close solvency gaps we recommend that the States require that uninsured motorist coverage be mandatory in automobile liability insurance policies, that higher liability limits be required, and that the States adopt either compulsory liability insurance or an uninsured motorist fund.

As further suggestions for reducing the incidence of automobile accidents and damage, we enthusiastically recommend the adoption and enforcement of sanctions designed to prevent injury resulting from alcohol or drug-influenced drivers; the adoption by all levels of government of highway safety programs and the support thereof by the bar and the public; and the exploration of effective merit rating systems for automobile liability insurance to reinforce the deterrent effect.

As changes designed to improve the administration of the auto accident tort system in the courts, we recommend that each State adopt procedures for quick and economical handling of small claims such as mandatory arbitration, short cause, nonjury procedures as are being pursued in Los Angeles County, Calif., the expanded use of courts of inferior jurisdiction and small claims courts.

We also recommend that each State should, by court rule, provide for the regulation and supervision of contingent attorney's fees.

We are opposed to the imposition upon the people of abrupt and drastic change in the law of the various States by which they have long been governed—a drastic sweeping away of the tort and insurance law and regulations which have evolved over long periods of time through action of the legislatures and the decisions of the courts in the various States.

The proposals being considered by the committee would impose a new and untried system upon everyone, everywhere, in an area of the law with which every man is most likely to be affected.

The cost of the proposed system is unknown and incapable of determination. The loss of the benefits enjoyed by the innocent victims of automobile accidents under the present law is drastic. Yet, the change for better or for worse would be irreversible and the damages, if that be the result, would be irreparable.

We believe that change should be responsive to the demands and requirements of the citizens through the laws of their respective States, and that wisdom as to the direction and magnitude of change should be acquired through experimentation in the various States through which reform may evolve and directions may change according to experience.

And, from the information which Mr. Kuhn stated in respect to surveys, 94 percent of the people are satisfied with the fault system and feel that fault should be an element in the system.

On behalf of the American College of Trial Lawyers, I thank you for extending to us this opportunity to present our views.

Senator HART. Mr. Deacy, we appreciate your willingness and that of the College of Trial Lawyers to give us these ideas and voice these concerns. I take it now Mr. Davidson will speak?

Mr. DAVIDSON. Thank you, Mr. Chairman.

Thank you for the privilege of allowing us to appear here for the American Bar Association, and I will refrain as best I can from repeating anything that has been covered by the previous speakers, although I endorse what each of them has said.

I think it has become most manifest from what this committee has heard today and from all the reports flowing in that all the bar associations, judges and lawyers recognize that there are serious deficiencies in the present system and the real problem is how to remedy this without doing more harm than need be done.

I would estimate that probably 3 million claims a year are disposed of under the present system, Senator, and perhaps more. If you think in terms of perhaps 30 years, 100 million cases or claims, or more, have been processed in an ordinary way under the system of State case law, and statutes where there is a vast amount of know-how on the part of judges and lawyers because the people are accustomed to working under and live with and accept these procedures.

The problem is whether such a system, admitting its deficiencies, as any human-made system is bound to have, whether it should be discarded at one fell swoop for a system that is new and uncertain and untried.

Once you cast out the old, as has been said to you, it is very difficult to turn and retrace those steps.

I think a planned, orderly development enables us to use this experience and knowledge of mankind, to evolve in an ordinary way. As has been pointed out, one State has taken that action.

We have been advised, Senator, that about 27 States—and I don't know how reliable this statistic is today—have bills pending in the various legislatures dealing with various facets of the no-fault problem. I suggest we give them an opportunity to decide whether they want to take this step.

Admittedly, there are serious objections to a State approach to the problem because of a so-called patchwork that we might have in dealing with a problem of this nature. But, at the same time, we can learn from their work and experience if the States are given a chance.

I know the States have gone very slowly and I realize that the work of this committee and the DOT study has given impetus to what is being done in the States. I know the concern being felt at the State level. Things are now beginning to happen. You have, in effect, built a fire under them.

We don't know what the effect of this statute will be on the costs, but if you were to take out of the court system the so-called small cases, under \$3,000, which are estimated to encompass 70 percent, approximately, of the cases—and these are the cases that are the greatest burden on this present system, costwise, where it is hardest to justify keeping them in the present system—the question might well be asked, what will the effect be on costs if you take those cases out of the system, as they are doing in Philadelphia, and perhaps we can learn meaningful lessons from what is going on there.

It seems to me the other problem that may not have been given fair and due consideration is this. The jurors, in a way Judge Reardon described, function as the conscience of the community. Those of us who have worked within the system know that jurors have, in the past, set a standard for the courts and the lawyers and the insurance companies as to what the community believes is fair and just as to who should bear the responsibility and what is just compensation.

This tends to be lost, Mr. Chairman, if this is not adhered to as a way and method of doing business.

There is the hope—and I know this is implied—that some of the cost of this system can be reduced by taking the lawyers out of it, so far as possible. But I think this is not realistic for this reason, that the service rendered by the lawyers under the present system has resulted in recovery, on the part of clients who do have counsel, of a net recovery beyond that of injured persons who do not have representation. The workman is worthy of his hire.

No matter what system this committee shall recommend, and the Senate and the House may eventually adopt, if there is one, unless it be free from problems and questions, the public is going to need legal counsel and their services to protect their interests if they are going to get fair consideration.

We were studying with some care to try to see under the present bill what some of the problems are that will necessitate help of counsel on the part of the injured public. Whether plaintiffs or defendants; it wouldn't make any difference because they will all be claimants under the no-fault system.

We see the question, for example, Is the disablement for which a claim is being made, due to injuries caused by entering, alighting from, or being struck by an automobile, or during loading or unloading?

These questions have arisen, for example, under policies of insurance now in effect.

We must realize many of these are unwitnessed accidents. There may be single car accidents with no one else around to see what happened. A person may say, "I got hurt getting out of a car. I fell and broke my hip." There will be claims of this kind, inevitably.

What is the extent of the disablement? Is it great enough to entitle this person to a catastrophic loss recovery? This troubles us very deeply. First, the fact that it is a rare professional man, be it doctor, lawyer, judge, or Congressman, who can fall within the so-called 70 percent category of the loss. I don't know how anyone is going to say what that loss is, that you are 70 percent totally disabled.

Many a man with an education may have paralysis, have his body paralyzed, and still not have 70 percent disability. Peculiarly, under the law as being proposed, that injured person won't know whether he has a right to proceed with a claim based on negligence and fault unless he first tries out this question as to whether he has that disablement.

So he has to go through a trial of all these medical issues and then there has to be a determination by a jury or a court, and if they say that he now is disabled to a degree, 69 percent, then he is out. If he is disabled up to 70 percent, then he has a right to proceed and recover under a negligence action.

I do not see, frankly, despite a lifetime of experience in this work, I must say to the chairman, at what level this ought to be fairly pegged or how it could be worked out satisfactorily. You have this problem. A person has a serious and permanent disability or a severe disability and I think you might say in good conscience he ought to be allowed to recover for human pain and suffering, even though he hasn't suffered amputations.

But under this present standard as now written into the law, it would be very, very difficult to determine whether he has come within the provisions.

You have other questions that will arise. Is this man justified in staying off work? You know, Parkinson's law—I beg the Chairman's pardon for addressing you this informally.

The level of expenditures and time away from work tends to rise to the sum of money available to pay the bills. If you have a \$36,000 limit, who is to decide whether this person should go back to work or need to stay off as long as he says he must? Does he need rehabilitation, psychiatric help and care of one form or another? Shall he be entitled to elective surgery? Is it rendered necessary by this injury?

So you have an unbelievable number of elements that will require expert counseling to protect his rights, whatever they may be.

We are basically concerned with the fact that overall, the proposed bill tends to allow too little to too many, partly because of the effort to keep the cost down. Something is being taken away from others who might be entitled to recover, to compensate others who would have no rights.

Comparative negligence might help to some degree to meet the point raised by the committee that too many people are not compensated, and perhaps they should not be denied compensation merely because they were substantially to blame.

I think the foregoing, if I may briefly summarize, accelerates our reasons why we should hesitate to leap instantly from the present system to this completely new and untried system.

I realize the temptation to go on and not hesitate when you have reached a certain posture, but I respectfully urge that you wait and give the States a chance to try their hands and see what can be done.

I thank you again for the privilege of appearing before you.

Senator HART. Gentlemen, thank you very much.

I shall now confess that I am a member of the American Bar Association, but inactive.

Based on the testimony, I am not a very useful contributor. Your last point, not that it is the most important, but it sticks in my mind, is to proceed with caution.

We are fussing with an area where for generations, or for centuries we have been evolving a pattern in the general concept of torts and damages. At least wait before we apply a national program to see how the States come along and what the experience is.

There are two reactions to that. First, the track record on how States proceed, particularly in an area where there is such political pressure is wretched. That is just one man's opinion.

Second, the basic figures on performance of the existing system suggest we risk an uncharted course on the assumption that the rocks

won't be any more penetrating of the hull than what is happening to the ship on its present course.

The rough figures are that we spent \$14 billion a year in premiums and \$7 billion is paid back. Just the economic losses are \$11 billion. That is an unsatisfactory allocation of resources, unresponsive to the needs.

Mr. DAVIDSON. May I respond? I might say that a great many members of the American Bar, Senator, are in complete agreement with your thought that it costs too much to process, if I may use that term, or directs the premium dollar into too many of these small cases. We can't satisfactorily justify by taking up the time of the courts, doctors, witnesses, and lawyers in these small cases. We are spending too much of our energy and brain power on matters of this kind.

I have felt this way for many years. I feel a choice must be made. It is hard for me to justify differentiating the treatment of the so-called small case, but at the same time there are areas where we must yield to the realities of the times.

Senator HART. Most of the dollars, as I understand the DOT study and other testimony, as of now go for persons with the smallest claims where there is overpayment, and for putting back together the automobile.

The human being who is seriously hurt is on the short end of the payment.

If our computations are correct, responding to another point which was made, all but 0.4 percent, or 99.6 percent of the \$11 billion of economic loss would be compensated under the no-fault bill that we have filed, and which we are attempting to improve and get opinions on. If our figures are correct, I think that is an overwhelming argument justifying the taking of a new course and not waiting, even, for the evolution of experience in the States.

As I say, the record of that is unencouraging. The first Federal workmen's compensation law was passed in 1908. It was sort of a no-fault system. The last State in the Union got around to adopting a workmen's compensation law 3 years ago.

Let me repeat the summary positions that we find in the DOT report to Congress, speaking first to the advantages and then to the disadvantages of the system that basically they propose.

It would increase limits, make almost compulsory, or at least require a written declination and these other things. It would be improvement within the existing system, which is basically the American Bar Association's recommendation.

The advantages they recite are these. It would bring reparations to some victims not now compensated, for example, those who are covered by contributory negligence or immunity doctrines.

The second advantage, compulsory universal insurance would prevent uninsured motorists from being able to benefit from the system while not contributing to it.

The third, delay occasioned by court congestion would be mitigated.

As against that, they cite these disadvantages. It retains most of the costs inherent in any adversary system.

It doesn't come to grips with the needs of the guilty victim and his dependents or survivors.

It is more likely to increase costs than to decrease them.

Finally, a more efficient judicial administration may increase the litigation burden rather than decrease it, since more cases can be litigated, albeit faster.

How do you evaluate their evaluation of improvements within the system?

Mr. DEACY. May I speak to that, Senator Hart?

I think we all recognize that it is the small claim which creates most of the problem, the expense problem. We suggest the modification of the existing first-party coverage that will cover most of those small claims, and effectively, without denying anybody their rights under the tort law, but will effectively take them out of the system.

As we say, if the system is modified as we recommend, the only person who will not have recourse to full recovery under tort is the person who is predominantly negligent, predominantly the cause, and the driver in a single car accident. Even those people will be covered under the first-party coverage that is available, and indeed, under the other collateral benefits which the figures show are substantial, so far as the social problem is concerned.

We feel that this is a sound way to proceed and we don't think that you have got to turn the whole system upside down in order to provide special remedies for these two classes of people, and they would be few.

When you take the small claim out of the system, as we think our proposal would, to a large extent, then you are taking away these criticisms that they are overpaid.

When you provide stability, solvency, everyone has adequate uninsured motorists coverage, so those people with remedies don't suffer for failure of solvency to pay them.

Then, I believe, you can clean up the system and still operate it under the present concepts without radical reform. If it doesn't work, then you can do something else.

But once you have adopted the radical plan, there's no turning around and nobody has any idea what it is going to cost.

Senator HART. Not to quarrel with all that you say, I still have concern that the really seriously injured person would still find that that kind of improvement failed to respond to his problems.

Mr. DEACY. I don't think you are going to find any system that is going to compensate everybody under every circumstance. I think it would be prohibitive.

Senator HART. I think we have a system that will restore the economic loss to virtually everybody, and that is the no-fault bill that we are considering.

Mr. DAVIDSON. We are fearful that under the provision as it is now drawn, the seriously injured person may be even more poorly compensated.

I am sure this is the last result in the world that this committee intends to bring about.

Senator HART. Maybe you can help us with the language on that troublesome section to which you addressed yourself.

Mr. DAVIDSON. We have grave misgivings, I might say. I can only speak for myself personally, because the American Bar Association didn't have the privilege of considering your specific bill when they were doing this work.

I was concerned about the \$36,000 that is being permitted, and it may sound as though I am unsympathetic to the position of the claimants, because most of the economic loss, according to the DOT studies that we have seen, usually doesn't exceed the level of \$10,000 up to the time of the settlement.

It is only the future economic loss, that in a few cases runs to \$25,000. This will tend to create a motive, an inducement for people to magnify, run up their losses. It becomes very hard to police a situation like this. It will add enormously to the cost of the system.

It is only one facet of the problem that I have addressed myself to.

Senator HART. I will ask Mr. Sutcliffe to develop any points that he wishes. However, I have one further question on your comments or judgment of the DOT study.

In the testimony from at least two of you, reference has been made to determining the effect that the liability of the tort system has on careless and negligent drivers.

The conclusion of the DOT study—and I omit two sentences, but I think do not distort the position they take—is on pages 53 and 54 of their study.

Unfortunately, the claim of a deterrent effect for the present automobile liability insurance system has so far proven unsusceptible to substantiation by empirical evidence—two investigations continued during the course of the Department's study, however, indicate that most accidents are caused by environmental or personal factors which are external to the individual's conscious control, and that punishment or its threat, therefore, is ineffective as a deterrent to deviant driving behavior.

I had better be careful of the way I phrase this question with all you trial lawyers. Would you agree that that is the general impression that you have of your own driving?

Mr. KUHN. My answer to that, certainly, would be twofold. There is a study that has been made, I believe, by a Miami engineering firm, and I believe the next speakers on the program have access to that study. It shows that fault is a deterrent to careless driving.

Secondly, it may be that a lot of accidents are due to environmental situations, but why eliminate any deterrents? If there are any deterrents in the present system, why not keep them?

I would admit that there are criminal sanctions that will be provided, but if there is any deterrent, I don't think there is any reason for discarding it.

It may be small or insignificant.

Senator HART. What about your own driving experience?

Mr. KUHN. I try to drive carefully, Senator Hart, for a lot of reasons, but not because the insurance man may see you. I don't think I am going to have an accident. I try to watch. But I am conscious that if I do have an accident I have a lot of inconvenience like going to court and being arrested and paying a fine and having my rates raised and all that sort of thing.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Thank you, Senator.

Judge Reardon, I am not puzzled, but I am intrigued by your statement in your testimony where you point to a logical inconsistency in S. 945 where the tort system is preserved for allocation of intangible losses for seriously injured victims, at least certain of the intangible losses.

There certainly is an inconsistency between advocating a no-fault system for certain benefits and a fault system for the coverage of other benefits.

I want to ask if it is possible that that inconsistency arises because for the seriously injured victim we as a society are satisfied that juries who do act, as you point out, as the community conscience, can best judge how much money is appropriate to help assuage the kinds of losses which money really can't cover. If this is so, does this suggest that in the determination of where to draw the line for intangible damages, we might create a mechanism more parallel to an arbitration proceeding, only constituted with a jury of 12 men or nine men from the community to determine, in a particular case, how much intangible loss there was and how much money is appropriate to satisfy that intangible loss?

It seems to me that we are going to the tort system because we recognize the viability, the utility, the justice of paying a man a certain amount because of certain losses that can't really be compensated for by money.

What I am asking you, is there another way that we might be able to go about accomplishing this same thing without the kinds of delays in payment, costs, and so forth, that are inherent within the present type of adversary proceeding?

Is there another kind of adversary proceeding which not only, perhaps, guarantees to the innocent person, but also to the guilty person, a certain level of payment for this intangible loss?

Mr. REARDON. I think two of them have been mentioned here today. One is the reference to the Philadelphia arbitration plan. One, I think I mentioned, and I think the representative of the college mentioned; namely, the increase in medical pay and the provision for loss of income. Wouldn't that do the same thing?

Mr. SUTCLIFFE. We are talking about the intangible loss factor at this point. Are you suggesting—

Mr. REARDON. You are talking about pain and suffering?

Mr. SUTCLIFFE. Yes. We seem to have three labels that we are using: pain and suffering, intangible loss, and general damages. They seem to be the three that we constantly interchange. If we seek to put some kind of limitations for cost reasons, for judgmental reasons, as to where you start the line, your suggestion is that we might submit to arbitration those claims not involving personal injury, for example, but for those claims in the personal injury category, that we cover in S. 945, we might allow for full adversary procedures. Would that be one way to direct the allocation funds for an intangible loss?

Mr. REARDON. I don't understand your suggestion, to be quite frank about it. I am not sure I understand it.

Mr. SUTCLIFFE. What we are trying to do in this legislation, and what other no-fault bills have tried to do, is to draw a line between where you will allow for intangible loss recovery above the first-party coverage. It is very difficult to formulate that line on the basis of medical costs or on the basis of permanent partial disability, because there are so many cases that the community conscience in a particular case would judge meritorious, that those kinds of categories kick out.

What I am looking for is some other mechanism that we could use to allow the community conscience to function in a manner that does not waste valuable resources, that is more efficient.

Mr. REARDON. Is there some compulsion to use another system?

Mr. SUTCLIFFE. Absolutely no compulsion other than the compulsion to try to bring the amount of money taken in and the amount of money paid out up to a level where you are covering losses which occur in the society. It is a compulsion, I guess, toward trying to create an efficient system that does not waste valuable resources of the society.

Mr. DAVIDSON. Mr. Sutcliffe, may I respond to that in part, if I can?

I think I would suggest approaching it from an opposite direction, that by pulling these so-called small cases out of the system and submitting them to compulsory arbitration, where the arbitrators representing the community think it is fair, they will allow damages which might include pain and suffering, but with a ceiling of \$3,000 or \$4,000, whatever it might be; but leaving intact all the other cases that shouldn't be pulled out for arbitration. Then all of these people can be compensated, if there are general damages, without running into the problem you have been confronted with in trying to define what is a serious disability.

If you talk about a 70 percent disability, that might take out virtually all of the cases.

Mr. SUTCLIFFE. This is why I am asking if there is not another level for your approach using arbitration and then a full-blown adversary trial before a court of law. We might be able to satisfy a certain level, mandate a certain level of first-party coverage, and leave open the intangible loss, but have an arbitrator determine that intangible loss.

You see, that particular solution formulated by you a moment ago then, when combined with a first-party floor, has never really been approached or considered. We are looking for answers to some of the problems that we may be confronted with.

Mr. DEACY. You might well say indeed that the adversary system applied to criminal law is very inefficient and costly. On the other hand, nobody is suggesting that we abandon that in favor of arbitrators or some summary system that will handle it probably as effectively, but at a greater saving of cost and efficiency.

I really don't understand the desire to get away from the adversary system in deciding conflicts between people because I think it is the fairest and best system that has ever been devised.

Senator HART. Gentlemen, the committee realizes that in the preparation as well as the time taken on your part you have borne a burden and we are grateful to you for doing so. As a lawyer I am delighted that you have appeared here and that in your several roles you were willing to try to help us. Thank you.

(The statement follows:)

STATEMENT OF EDWARD W. KUHN ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee, my name is Edward W. Kuhn, Chairman of the Section of Insurance, Negligence, and Compensation Law's Special Committee to Achieve Justice Through the Adversary System of the American Bar Association, I appear here as a representative of the American Bar Association by designation of the President of said Association.

The American Bar Association is the largest legal organization in the world with a membership of 150,000 lawyers, judges, professors and scholars. Its House of Delegates is composed of 291 members and represents not only the American Bar Association, but because it contains representatives of all the state bars, the large local bars and approximately 20 affiliated legal organizations, it represents

the legal profession in the United States. It is the national spokesman for the legal profession.

The Association has a vital interest in S. 945 and in "no-fault" legislation pending in the Congress. It has given the subject much attention and at its August, 1969 annual convention in Dallas, Texas, approved Report No. 18, the so-called Powers Report. A copy of said report is attached hereto, and we ask that it be made part of the record. It is a comprehensive treatment of the subject matter from practically every angle. It was compiled after thirty-eight meetings of two-day duration by a committee of lawyers and judges ably assisted by a commission composed of representatives from government, the industry, law schools and consumers.

The fundamental principle adopted by the House of Representatives is as follows:

"The present system for providing reparations for those injured in automobile accidents, based upon the concept that if there is no fault there is no liability and relying upon an adversary method of trial before a court or jury as the means of determining liability and the amount of damages, be retained as the basic legal structure for dealing with such cases but that the following proposals for further study, changes in, additions to and modifications of such system should be further considered . . ."

The House of Delegates adopted approximately sixty committee recommendations for improving the present tort system classified as follows:

- A. Recommendations regarding delay in the courts, twenty-four in number;
- B. Recommendations as to substantive law, seven in number;
- C. Recommendations as to the law of damages in automobile accident cases, four in number;
- D. Recommendations as to certain categories of persons who are injured in automobile accidents, three in number;
- E. Recommendations as to costs being eight in number;
- F. Recommendations as to automobile insurance, four in number;
- G. Recommendations as to the use of the tort law to deter dangerous driving, one in number;
- H. Recommendations as to the Cotter Plan, eight in number;
- I. Recommendations as to highway safety, one in number.

A condensed copy of the recommendations as taken from the report is attached hereto and made a part of the record.

Also attached is copy of an article written by Franklin J. Marryott, retired general counsel of Liberty Mutual Fire Insurance Company, and the reporter for the Powers Committee, which sets forth the position of the American Bar Association and made a part of the record.

It is not my purpose to go into each of the many recommendations contained in the report, which is known as the lawyer's plan. Neither is it my intention to cover the approximately one hundred plans in existence on "no-fault" insurance. The published line-by-line commentary of conflicts, unresolved problems, inequitable treatment and fallacious reasoning is copious and easily obtainable.

My general objection to all "no-fault" legislation is that there is no great demand by the general public for a change. The surveys conducted by the Pennsylvania Chamber of Commerce, Market Facts, Inc., the State Farm Mutual Insurance Company, Insurance Agents, Drake University, the University of Michigan, the Minneapolis Tribune and even the Department of Transportation indicate that the majority of the public are satisfied with the present system. These surveys are the answer to those who claim that the legal profession is opposed to "no-fault" plans because of the alleged adverse effect on the lawyers' pocketbooks.

My specific objection to these "no-fault" plans is that they are asking the injured person to give up his claim for pain and suffering, loss of life's pleasures, inconvenience, future impairment of earning capacity, disfigurement, loss of limbs, sight, hearing, consortium, prenatal injuries, impotency, right to catastrophic losses and many other losses in return for a certainty of payment of his medical and hospital bills and some loss of earnings. They discriminate against housewife, the minor, the elderly, the disabled, the unemployed, the married man with a large family and many other segments of our population.

I am opposed to depriving the union men and the laborers and to those who have provided their own health and accident protection of their collateral benefits because many of these plans would limit recovery by the amount of available collateral benefits.

I am opposed to forcing people to purchase two types of policies—"no-fault" and present policies.

There is no proven certainty that costs to the premium paying public will be lowered. There are many claims but the actuaries are in fundamental disagreement. Many eminent statisticians contend that costs will increase under a "no-fault" plan. And if we go to a "no-fault" plan it is going to be extremely difficult to return to the present system.

A "no-fault" plan will have a great impact upon the industry itself. Under some of these plans the highly competitive and efficient small and medium-sized auto insurance writers will be doomed to extinction because only the giants are equipped to withstand the rating uncertainties, administrative costs and retraining of personnel.

The adoption of these plans will ultimately lead to Federal takeover of the automobile insurance industry. They will injure the deterrence factor and increase careless driving. They do violence to our traditional and moral belief that the negligent party should compensate the innocent victim of an accident. They should not be treated as equals.

We do not accept the contention that automobile cases are clogging the courts. Other types of cases are the main culprits. We do not believe that because auto cases require 11.4 percent of the judge's time in the federal courts and 17 percent in the state courts the present system should be amputated. We do not believe that the juries are unable to determine fault.

The American Bar Association takes no position with reference to the three other insurance bills pending, viz; the group merchandising, the tax reductions and the automobile safety bill.

It would be difficult for any lawyer to leave this subject without some comment that goes beyond the economic realities involved. The law and all those involved in it can view with reasonable pride the advances in individual rights which have been made in the last 20 years. That a correlative growth in individual responsibility is often lacking seems all too obvious. A large part of the American population has abandoned the belief that one is responsible in the next world for what he does here. We are now busy considering plans which will tell the same people that they aren't even responsible in this world for their acts. All the present "no-fault" programs contemplate one further abandonment of individual responsibility. No one can with any degree of certainty calculate the effect of this upon the level of death and injury on the highway. I think it can be said with reasonable certainty, however, that a system which boldly proposes to reduce benefits to the innocent in order to compensate the person at fault is not likely to contribute to added safety on the highway. And quite apart from its immediate effects on life and limb, it strikes at every core of the proposition that freedom is based upon individual responsibility.

When all is considered, the benefits to be received from any "no-fault" plan are wholly illusory. And the losses such a plan would bring are too high a price to pay for an experiment the public doesn't want anyway.

Senator HART. We welcome the president of the Defense Research Institute, Inc., Mr. Willis Smith of Raleigh, N.C.

I think it would be well, because I understand one of the witnesses who is scheduled, was not able to come. If you, Mr. Smith, would introduce, for the record, those who have come here.

**STATEMENT OF WILLIS SMITH, JR., OF RALEIGH, N.C., PRESIDENT, THE DEFENSE RESEARCH INSTITUTE, INC.; ACCOMPANIED BY REID A. CURTIS, PAST PRESIDENT, ASSOCIATION OF INSURANCE ATTORNEYS, MERRICK, N.Y.; WILLIAM E. HEROD, PRESIDENT, FEDERATION OF INSURANCE COUNSEL, NASHVILLE, TENN.; EDWARD J. KELLY, PRESIDENT-ELECT OF THE INTERNATIONAL ASSOCIATION OF INSURANCE COUNSEL, DES MOINES, IOWA; JAMES D. GHIARDI, RESEARCH DIRECTOR, DEFENSE RESEARCH INSTITUTE; AND JOHN J. KIRCHER, ASSOCIATE RESEARCH DIRECTOR, DEFENSE RESEARCH INSTITUTE**

Mr. SMITH. I wish to express our thanks to you for the privilege of being here.

I have on my right, Mr. William E. Herod of Nashville, Tenn., the president of the Federation of Insurance Counsel. On my immediate left is Mr. Reid A. Curtis of Merrick, N.Y., who is the immediate past president of the Association of Insurance Attorneys and a director of the Defense Research Institute.

Mr. Herod is also a director.

On my far left is Mr. Edward J. Kelly of Des Moines, Iowa, who is the president-elect of the International Association of Insurance Counsel, a director and a member of the executive committee of the Defense Research Institute.

We also have with us Prof. James D. Ghiardi of Milwaukee, Wis., a distinguished professor of law at Marquette University, the research director of our institute, and the current president of the State Bar of Wisconsin.

With him is Mr. John J. Kircher, the associate research director of our institute.

Senator HART. Mr. Smith, if you would like to have the professor and Mr. Kircher join you, they might very well have some suggestions.

Mr. SMITH. Senator, the Defense Research Institute was organized in 1960 by members of the International Association of Insurance Counsel as a research institution devoted to improving the administration of justice and also to increasing the skill and knowledge of defense lawyers.

We have approximately 6,000 lawyer members.

Senator HART. Talk about a slow audience, you had one on me. Until you just explained, I had been sitting here wondering how an institute involved with the military security of the country happened to be in here. I didn't get the defense point at all.

I thank you for explaining it.

Mr. SMITH. We think we help the defense lawyers with their efforts. This is one of our aims.

Senator HART. I am sure of it.

Mr. SMITH. We have 6,000 lawyer members, Senator, and all of the members of the International Association of Insurance Counsel, all of the members of the federation, all of the members of the Association of Insurance Attorneys, are members of DRI.

In addition, we have other lawyer members who are not members of those associations. We have insurance claimsmen who are members and we also have corporate members. All told the 6,000 lawyers are from law firms which aggregate probably 20,000 lawyers.

In Milwaukee we maintain a staff of four lawyers, research assistants, an information director, and a library. We issue a number of publications each year. We are primarily engaged in research and do not lobby. This will possibly be our only appearance in this respect.

We wish to offer you and your staff the facilities of our institute and give you the benefit of our ideas.

I must say, sir, that we do wish to oppose the present proposal.

Since we have a prepared statement, I would like to submit it for the record with the exhibits. We have a number of exhibits attached and I would like for each one of those to be made a part of the record, with your permission.

Senator HART. I noticed that you did have a statement and apparently were summarizing.

Yes, let us order the statement printed in full as though given in full and the several exhibits <sup>1</sup> will be made a part of the record.

Mr. SMITH. Thank you. You have been very patient today and the time is late.

I will very briefly, if I may, mention the points that we are concerned with in the bill.

We think, first, there is no public understanding of this matter of "no-fault." We think, also, there is no public demand for drastic change of the present system. These views are supported, we believe, in our statement.

We think that the term "no-fault" is imprecise. In our statement we have attempted to define three different types of plans. The complete self-insurance proposals almost completely abolish individual responsibility. Examples are your bill, and the Rockefeller plan.

Then there are limited self-insurance proposals. These give some protection on a first-party basis but they also allow the injured party to follow a legal remedy.

The third type of proposals are the various reform recommendations. I would like to discuss our reform proposals briefly in just a few minutes.

At the beginning we have objections to the Hart bill in that its benefits, we think, are limited.

The first witness this morning was the very distinguished gentleman from Wayne County, Mich., and he endorsed the plan. I couldn't help but think of an 8-year-old girl walking home from school one day in Wayne County, Mich. If she was struck by a drunken driver running up on the sidewalk and the accident injured her so badly that she lost her leg, she would have no economic loss in the sense of a wage loss. She would only have her hospitalization. Then she would go through life with the limited recovery of a few artificial limbs as she grows.

I believe I understand that the committee is concerned about this problem, but we do wish to state very strongly that this is not a proper way to approach it. I hope I am correct that the committee is considering this.

Senator HART. Yes; you are. We are concerned about it.

Mr. SMITH. We think, sir, it is perhaps inequitable between the victim and the person who causes the accident. I will be very brief on this, just as an illustration.

If two young men are involved in an accident and one of them has gone through a red light and both are 22 years old and one is a student and one is an entertainer and they lie in a semiprivate room side by side for 6 months while their legs heal, the student receives no money other than the hospitalization and the entertainer receives \$6,000 even if he is the man at fault. This doesn't strike me as reasonable.

We object to the compulsory feature of the no-fault system.

We object to the attempt to reduce costs by reducing benefits. This again goes back to matter of the pain and suffering.

Let me say this, Senator. I am sure it was not your intention, but it seems to me that you are perhaps putting economic loss ahead of human loss in this bill. From what I know, I doubt if that was your intention but I believe that is the result. We think that a person who

110 DECEMBER 1964

<sup>1</sup> See p. 750.

is injured through the fault of another should have a legal right to proceed against that other person.

This plan would remove the fault system. We think that fault does act as a deterrent. A study filed as exhibit E with our statement supports this position. Another study has been prepared and reaches the same conclusion. We will submit that to the committee when it is published.

Senator HART. We would welcome that.

Mr. SMITH. One more point and I will move on to our proposals that we advocate.

A question was raised this morning by Senator Cook, I believe, about which courts would interpret the act proposed by your bill. This being a Federal act, I would assume that the Federal courts would have to interpret it. I think we might get into some real congestion in the Federal courts as a result.

In 1969 we prepared and published back a document entitled "Responsible Reform." This is exhibit H of our exhibits. So far as I know, this is the first of the reform proposals.

I believe that a great many of the proposals advocated by the American College of Trial Lawyers, the American Bar Association, and the American Trial Lawyers—are modeled after our proposals.

We urge your committee to consider our proposals. We know they will receive your attention.

One of the first things we cover is highway safety. We believe there should be strict sanctions for persons who are habitual violators of motor vehicle laws or who drive under the influence of drugs or intoxicants. There are more people killed on highways each year than in Vietnam and we think strict enforcement of the laws could cut the cost of insurance as well as saving lives.

We advocate a system of optional first-party coverage. The difference between our proposal and those of other plans is that their coverages are mandatory or compulsory and ours is optional. We believe that the economic loss can be covered through an optional first-party proposal.

We have a proposal on court congestion.

We have a proposal for the contingent fee regulation. We believe that the percentages charged by plaintiffs' lawyers should be regulated by State bars or by court rule. This would perhaps result in more money going to the victim.

We have considered the question of comparative negligence. We have discussed the question of advance payments by insurance companies. We think these should be given consideration.

Mr. Curtis is chairman of our committee for the continuing study and undating of Responsible Reform. I would like to ask Mr. Curtis to discuss the activities of his committee and anything else you may wish to bring to his attention.

Mr. CURTIS. If you please, Senator Hart, we have had, as Mr. Smith has advised you, these proposals for quite some time. We appreciate that times change and quite rapidly and in accordance therewith we now have a special committee, of which I am honored to be the chairman, to study and update Responsible Reform.

One thing I would like to point out about our proposals is that No. 1 on the list in order of importance is highway safety, as Mr. Smith

referred to. We still feel that we are lagging far behind the rest of the world on highway safety and yet we do nothing about it. It is a costly process but it is one that we have to do. If we eliminate the accident at its causation point, we eliminate the costs of insurance for it because insurance costs vary with the accident rate.

We are also studying very carefully at this time our second proposal, which is for first-party coverage. It provides a first party economic loss reimbursement for the injured party, and of course it would be regardless of fault. At the time Responsible Reform was published we felt that there was no way to truly measure pain and suffering on a formula basis. We still feel pretty much that way. We are now coming to the conclusion, although we haven't reached any finality in a report as yet, that something must be done with first-party coverage, perhaps on a compulsory basis. We originally proposed it for the States to act upon dependent upon the situation in the individual State.

We are now coming to a conclusion, although we haven't really finally reached it, that we must do something about the pain and suffering situation in small cases which has been the complicating factor that I believe has increased the cost of insurance far beyond what it should be, as you pointed out earlier today.

We have studied very carefully the plans that have been proposed by the National Association of Independent Insurers, by the American Mutual Insurance Alliance, both of which are not no-fault plans but both of which refer to the small case and they fix \$500 as special damage in those cases as the breakpoint between the small and the large case. Below that amount they fix a formula of 50 cents on the dollar of special damage for pain and suffering.

A similar plan has been proposed in the State of New York by Senator Gordon, chairman of the Senate Insurance Committee, called the Gordon bill. That proposes that \$400 be the breakpoint on these small cases and that pain and suffering or general damages be paid on a dollar-for-dollar basis up to \$400. Over that, the case goes into the adversary system.

When you go into formulas for general changes you have to hurt somebody. You have brought up here the figures of cost of insurance. You have said that there was \$14 billion in premium payments, that there were \$11 billion of economic loss and only \$7 billion of payout from that premium dollar. Of course those statistics standing alone show a bad situation. But I believe that a remedy in the way that I have talked about, our first-party coverage and a formula for pain and suffering in the smaller case, will bring about a tremendous improvement in the payout compared with the premium dollar. This is because it costs as much for the insurance company to handle these small cases as it does the large one. They are flooded with them. They are frequently brought, as one of the speakers mentioned this morning, as a coverup for property damage recoveries.

I don't know about Massachusetts where it was said there were seven times as many claims as the national average and it was because they didn't have compulsory property damage coverage, but I do know that in New York small claims of this kind are frequently presented in order to collect fully for property damage. This is because the lawyer tells the client when he comes in, I can do you no

good. If you have \$250 damage to your car and I get you \$250, which means a lot of work, by the time I charge my fee you have lost money. So how is your neck feeling? And of course he has a bad neck for a little while and recovers.

So those little cases are eating up that money.

There is one other factor that you must look into carefully before you accept that \$11 billion figure. The figure was \$11 billion for economic loss and I presume those figures are taken probably from insurance company statistics as to the claims made. I don't know, Senator, whether you ever had any active practice in the field of negligence as an attorney. I have been in this business a long time as a defense lawyer. I can tell you that the collection of bills and particulars, which in New York is the specification of damage furnished by the plaintiff, is the greatest exercise in fiction that you have ever seen. The economic damage, if you take it from those figures, the amount of claimed loss earnings and the amount of claimed medical damages, upon inspection and investigation and trial sometimes is cut down to one-tenth of that amount and frequently to half.

So the \$11 billion of economic loss is undoubtedly based on those claims.

If you divide that by half you come closer to the actual fact.

Now, your bill has as its intention to compensate, as you point out, 99.6 percent of those who have that economic loss. But you are only going to compensate them for net economic loss. If we took net economic loss, deducting collateral benefits on those bills of particulars, you would find that instead of being \$11 billion it would be about \$1 or \$2 billion of uncompensated net economic loss. On that basis, by adopting a collateral source rule, the present system could handle this as well, could still provide for pain and suffering compensation to the injured party, and could reduce the premium costs.

So actually you have a false statistic, I respectfully state, in that \$11 billion. When you are talking about \$11 billion, that is not net economic loss. It is economic loss as claimed by plaintiffs.

There is one other factor there. I know in the DOT study much of what they went into was future economic loss when the person was interviewed. I don't know whether this \$11 billion is based on claims of a plaintiff of having \$500 loss now but continuing in the future, because if so, again it is highly suspect as to its probity in many cases.

Senator HART. It is my understanding that those figures do come from the DOT. Mr. Sutcliffe may clarify the source, or at least identify the source.

Mr. SUTCLIFFE. I would like, for the record, to include from the Department of Transportation an exact explanation of the way they arrived at the figures. It is my understanding that they were aware of the possible bias of basing the figures on the basis of amount of claims submitted to insurance companies. The statistical basis for the net economic loss that they felt was compensable was on the basis of information taken from outside claimant files, and primarily through personal interviews they conducted specifically for the study. They were not biased to the extent that a person was trying to make a claim in order to recover a certain percentage of the claims for the insurance study, but for the record I will provide a precise explana-

tion from the Department of Transportation as to how they arrived at that particular figure.

Senator HART. Let it be included in the record at this point.

(The information follows:)

OFFICE OF THE SECRETARY OF TRANSPORTATION,  
Washington, D.C. June 7, 1971.

MR. S. L. SUTCLIFFE,  
Counsel, Senate Commerce Committee,  
Washington, D.C.

DEAR LYNN: AS you know, the calculation of accident loss data is fraught with conceptual, definitional, semantic and informational difficulties. With that verity in mind, let me review just a few of these difficulties and then describe the methodology employed in the "compensable economic loss figure" in the Final Report.

First, in many cases the existence of a "loss" is established only when a "cost" is actually incurred and, in turn, the incurring of the cost takes place frequently only when there is assurance of reimbursement from a compensation source. Thus, if a victim has access to a comprehensive insurance policy, his therapeutic regime will be similarly comprehensive, including all kinds of purposely redundant test procedures, X-rays, special care, etc. Because these expenses are cost-free to the victim and accident related, they would constitute compensable losses in the context of our calculus. In contrast, "needed" medical care that is not compensable by some benefit source, can't be paid for directly by the victim and is, therefore, not received and never appears in our crude calculations of a "loss." The relative degree of over- and understatement of losses that occurs from this anomaly is simply not quantifiable—although, on balance, it would seem almost certain to lead to an understatement of losses.

Another major conceptual difficulty is found in the estimation of the value of "lost future wages" and their translation into present values. The methodology employed in the "Serious Injury Study" and the basis of the estimates used in the Final Report is described in detail in the study, "Economic Consequences of Automobile Accident Injuries." Suffice to say that the admittedly arbitrary assumptions used in this methodology were purposely made very conservative, and, therefore, the resultant estimates are almost certainly on the low side.

The calculation of "compensable" economic loss is briefly described in the Final Report pp. 4ff and the applicable footnotes. Medical expenses and wage losses were extrapolated from the results of surveys, one of fatally and seriously injured victims and the other of paid personal injury tort claimants. The methodologies and survey procedures for both of these studies is fully documented in the reports, "Economic Consequences of Automobile Accident Injuries" and "Automobile Personal Injury Claims." In both cases, survey data were based on economic losses reported by the claimant or victim. For serious injury victims, loss data was collected in much detail and in many cases independently verified with doctors, hospitals, etc. In the case of paid tort claimants, the economic loss data was checked by the insurance company adjuster who presumably had access to receipted bills, etc. Thus the loss data used were not the losses "claimed" by victims but rather insofar as they could be reasonably policed were the economic losses actually incurred to date of interview or settlement. While there is always the possibility of conscious misrepresentation or unintentional mistakes, or failures of memory by victims, considerable precaution was taken to avoid distortion of the data by these phenomena. Most definitely, simple *assertions* or *claims* of losses by victims were not used in these estimates. Finally, to the degree that one can make a judgment about these compensable economic loss estimates, they seem much more likely to have been understated than exaggerated.

As you know, totally excluded from these loss estimates were any claims for intangible losses, i.e., pain and suffering, inconvenience, etc.

One final point, the witness was correct in saying that the compensable economic loss estimates were not "net," rather they are "total" compensable economic loss estimates free of any excludable duplication or exaggeration and purposely hedged to be on the conservative side.

If you have any further questions in this regard, we will be happy to help you.

Sincerely,

RICHARD F. WALSH,  
Deputy Director of Policy and Plans Development.

Mr. CURTIS. I speak, as I say, from the standpoint of a practical, practicing trial lawyer. I suspect statistics based on claims made and sometimes on personal interview. However, that is one of the things that we feel is somewhat unfair in the statistics presented against our position under responsible reform. We have many other fields that we have recommended and are continuing to study. Court congestion is one. That is covered by having enough judges based on a population basis. This morning someone mentioned Dade County, Fla. Dade County was 6 years behind until Florida adopted its constitutional provision giving them one circuit court judge for each 50,000 population. I understand now they are about 35 or 40 days behind if they really want a trial that quickly. It can be covered easily that way.

We also have the field of comparative negligence, and as a defense lawyer in New York I have recommended to the New York Legislature that they adopt the Wisconsin plan of comparative negligence which permits a plaintiff to recover, providing he or she is less negligent than the defendant. In other words, the 51-49 plan. We do not at the present time have—and I think it is unfair—the Mississippi plan which allows complete payment. Even if you are 99 percent negligent you still get 1 percent of your damages.

We also, of course, have urged the elimination of the ad damnum which is used by plaintiff's counsel to kite verdicts and particularly the publicity in the papers. We feel that the responsible reform recommendations in our exhibit H, if they were adopted, would solve much of this problem and with the updating which we expect to have probably by around the first of July. We feel that a plan which adopted our proposals would solve practically all of these problems and should therefore be given a fair trial before, as one of the other people speaking here said, we have an irreversible system that could do radical harm if it doesn't work out as it was thought.

Just one last comment. People were talking this morning about Great Britain, West Germany, and somewhere else in Europe as having these health plans that pay everybody. Their insurance works out fine. The only trouble with it is that the statistics that I saw here, which are supposed to be from the Metropolitan Life Insurance Co. and came out of Best's Insurance News, showed of 13 countries, the United States had the best safety record in relation to mileage driven during 1967-68 and the countries with bad records were Australia, Canada, Denmark, Finland, Great Britain, Japan, Netherlands, New Zealand, Norway, and West Germany.

We have a fault system. They have in part, no-fault system in many of those places and our statistical record is much better than their's. I think somebody ought to look into that before we adopt plans and say these other countries are getting along fine. They are, but they are killing more people.

Senator HART. Coming from where I do I will have to insist that this reflects the motor vehicle safety consciousness of the American manufacturers and roadbuilders.

Mr. CURTIS. I think it does. I know a little bit about automobiles and foreign automobiles, and many of them are very unsafe vehicles also.

Senator HART. Thank you.

Mr. CURTIS. I would even agree with Mr. Nader, "unsafe at any speed."

Mr. SMITH. Mr. Kelly will say a few words.

Mr. KELLY. Senator, first of all on behalf of the International Association of Insurance Counsel with our 2,400 members, let me express our appreciation for the opportunity to appear here. You have had responsible reform presented to you. There doesn't seem to be any demand for a complete reversal of the traditional tort system. It is our responsibility to present responsible reform to you and to the public.

How do we responsibly bring our current systems up to date to meet current needs? I believe that has been the proposal. I want to touch on two things that I think are very important, some of which will be touched on by other speakers.

First of all, I mentioned that there doesn't seem to be any demand for a change. The other thing, and it was mentioned by Senator Cook this morning, is the more efficient use of the legal effort. We have judges appointed now on the basis of whether we ought to have some more or not. This is not an efficient use of the legal effort. We need them where judges are most needed and they must be moved around and used where they can be used most efficiently to handle the volume of business before them.

You also notice in this, sir, when you read it, the matter of the abuse of the contingency fee. That hasn't been discussed here by Mr. Kuhn or the other speakers, but it is pointed out that contingent fees must be regulated, and perhaps in that manner a greater amount of the dollar paid by the insurance carrier will be received by those who are injured.

Our facilities in the Defense Research Institute are available to you and to your committee. I appreciate the opportunity to appear here.

Thank you.

Senator HART. Thank you.

Mr. SMITH. One last thing, Senator, if I may, and we will conclude.

The question of State action has come up and the proposal of the Department of Transportation calling for State action. I would like to call your attention to exhibit F in our statement which shows that at the time this was prepared, bills had been introduced in 33 different States containing some form of no-fault or modified no-fault proposal. I believe there have been two bills introduced in Michigan, one on the Cotter-type plan and one on another plan.

I think it is possible there may be action in the States.

Senator HART. Given the general reservations you have about no-fault, it is hardly fair to ask you this question, but with an apology, let me put it to you.

Assume that we use the words "foreseeable future," that we can't really guess what we are talking about, but in the next few years we will have half of the States with no-fault if a Federal no-fault bill does not emerge. That would be 25 varieties one could anticipate of no-fault.

From a defense counsel's standpoint is that 25 varieties preferable to a uniform national variety?

Mr. SMITH. You mean if we have to have something would we rather have a uniform law?

Senator HART. Accepting the assumption, although not necessarily agreeing with it.

Mr. SMITH. Senator, I had not thought about that. We would like to give that some consideration and we will not evade your question but we will write you an answer. Maybe the others could answer it now but I would prefer to consider it.

Mr. CURTIS. Speaking for myself, Senator, I would agree with you that if we were going to have a no fault-plan, then perhaps a Federal one would be more all-inclusive. Although it has the Federal Constitution and 50 State constitutions to overcome. However, I thought I spoke against no-fault. Limitation of liability bills are I think coming. But I think one last statement is this, and perhaps it answers it.

I have found that as a practicing lawyer, in most cases the people were not so much concerned about economic loss. In New York 83 percent of the people have collateral benefits anyway. They throw as much money on the horses over at Roosevelt Raceway or on a Saturday night out as they lose in their economic loss in the case. What they were complaining about was the pain in the back that didn't go away, the possibility of a future operation, the twisted arm, the inability to use their normal functional operations. That was much more important to them than economic loss.

The bill which you proposed in all good faith wipes out the thing they are really worried about and gives them a net economic loss. I don't know where the information comes from otherwise, but frankly from a practical standpoint with some people there are some very bad cases with high economic loss and of course it is terrible, but in the average case even up to \$1,000 of net economic loss the person isn't worried about that. He is going to worry about whether he will get better or whether his neck will hurt him all the rest of his life.

That is why I don't think a Federal no-fault bill should be passed. Senator HART. I have your basic position clear.

Mr. Smith, did Mr. Herod intend to make some comment?

Mr. HEROD. Thank you a lot, Senator.

At this late stage I am afraid that anything that I might say would be merely repetitious. I agree fully on behalf of the Federation of Insurance Counsel with the statements and proposals that are submitted through Mr. Smith and the others.

Thank you, sir.

Senator HART. Professor, maybe you would like to speak.

Mr. GHIARDI. I would like to respond to your question about 25 State plans. Our statements points out that there is no virtue in uniformity. I would fear a Federal tort law system or automobile insurance system that equates the citizens of Wisconsin with the citizens of the other States where we have some different needs, where we have some different cost factors. We have different figures. I think we can accommodate varying plans. I don't anticipate that if we put in State plans that they will vary that much.

There is considerable uniformity among tort law today. We can get down to a few areas where there isn't uniformity. One is comparative negligence. Wisconsin is a pioneer in that. We suddenly find now, after 35 years, that we have been rather far thinking and liberal in our Midwestern State that borders Michigan.

Now the other States, the effete States of the East, have suddenly looked at these plans and think they are pretty good. We think much can come out of these State plans. We don't think that necessarily it has to come out of Washington.

As a teacher of insurance for 25 years, as a teacher of torts for 25 years, I have not been convinced that one jurisdiction, or the Federal Government, will necessarily evolve the plan that ought to be the plan in this country. I would fear that and I would like to answer the question that you posed directly, because as somebody said in DOT, they would like to see every automobile that drove around the Washington Monument covered with the same amount of insurance, applicable to the same thing, even though they come from 50 different States.

That may be all right when they are here driving around the Washington Monument, but when they are back home we would like to have them have a little closer touch to our courts, to our legislators and to the insurance problems that we face in each jurisdiction.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. In your proposed statement, Mr. Smith, you suggest that no-fault plans will compel motorists to insure themselves against the carelessness and recklessness of the other highway users. What does the present uninsured motorist coverage purport to do if it doesn't purport to have a motorist insure himself against the carelessness and recklessness of another driver who is uninsured?

Mr. SMITH. The present uninsured motorists' provisions?

Mr. SUTCLIFFE. Yes. You are arguing that a no-fault plan will require you to insure yourself against the carelessness of the other drivers on the highway. At the present time does the uninsured motorists' coverage also compel you to insure yourself against the carelessness of the other drivers on the road?

Mr. SMITH. This is not compulsory in many places, so far as I know. North Carolina is a compulsory State and there are minimum limits for uninsured motorists coverage, but it does not compel anything beyond the minimum limits.

Mr. SUTCLIFFE. Does a prudent man take out such a coverage anyway?

Mr. CURTIS. If you are gaging it by prudent men, I would say yes.

Mr. SMITH. We are considering not only the question of uninsured motorists but underinsured motorists. Mr. Curtis will report on that.

Mr. GHIARDI. Our reform proposals include the mandatory offer of uninsured motorist insurance. We find that where it is offered and particularly where there has to be an express rejection, that most people will take uninsured motorists because its cost is low. It protects them against the event that there is someone that is not economically able to respond to damages. As Mr. Smith points out, we also think that there is a development by some companies to provide for the so-called underinsured motorists; that is, uninsured motorists, usually based upon the minimum limits in the State, in our jurisdiction \$15,000 and \$30,000.

Mr. SUTCLIFFE. That is high, isn't it?

Mr. GHIARDI. Yes. In other States it's \$5,000 and \$10,000. One of the proposals being considered is the fact that it is inadequate because there can be serious loss. If I carry liability insurance for \$100,000 to \$300,000, why shouldn't I be protected to that same extent if somebody else strikes me and he only carries the minimum limits of 10-20 or 15-30? So there are ways in which you can have feasible protection for yourself.

The answer is yes, a prudent man would do that providing we keep the rates low enough that he can purchase it.

Mr. CURTIS. And one other thing. Uninsured motorists' coverage covers pain and suffering, general damages. It doesn't cover just for net economic loss.

Mr. SUTCLIFFE. It is one of the few coverages, then, that prefers the person to the car. As I understand in most coverages it does not cover the property damage loss.

Mr. GHIARDI. Uninsured motorists' coverage does not cover property damage loss.

Mr. SUTCLIFFE. Doesn't only one State allow for property damage coverage?

Mr. GHIARDI. I think you are correct. An endorsement is allowed in some jurisdictions.

Mr. SMITH. One of our points is that you are forced to purchase the insurance mandated by S. 945 but you don't get the benefits if you have other collateral benefits.

Mr. SUTCLIFFE. Perhaps there has been a misunderstanding as to what the bill would mandate. We had an interesting exchange on Monday with Mr. Klein of Consumers Union to discuss the way in which you would rate a particular policy on the basis of the collateral benefits available to the purchaser of that policy so that you would not be paying, as someone suggested here, twice and receiving only one recovery. There would have to be built into the rating system a procedure whereby the collateral sources of the individual being insured on a first-party basis would serve as a setoff to any premium charge on the mandatory first-party coverage.

We raised the point with Mr. Klein because he was advocating this on the basis that first-party coverage outside the automobile insurance system seemed to have greater cost savings to consumers. We raised it with him, as I began to say, to ascertain from a practical standpoint how you would create these classifications and fit the different rating systems together so that you would avoid the kind of criticism that we have had of double payment and single recovery, rather than the other way around now of double payment and double recovery and no coordination of benefits.

Mr. SMITH. That strikes me as being difficult to do. Of course I anticipate that the insurance company would provide in its policy that it was secondary to the automobile policy.

Mr. SUTCLIFFE. The interesting thing, on the basis of the House hearings, is that the Blue Cross and Blue Shield has communicated to Congressman Moss that they are going to begin treating automobile accidents as primary rather than secondary. Rather than trying to get rid of the automobile accident claimant their emphasis is exactly the opposite of what was anticipated by some of their critics.

Mr. CURTIS. I think the reason they do that, they have a fear of losing premium volume. They were afraid that if they were going to be secondary to automobiles, a lot of people might drop them completely to save money. They would be mandatorily forced to buy automobile insurance. I had heard that and that seems to me a pretty well-founded rumor, that they say, "We'll be primary on automobile accidents," because they want to keep that premium dollar.

Mr. SUTCLIFFE. The auto insurance industry, as you realize, is very anxious to be able to keep that premium dollar and remain primary in the system.

Mr. CURTIS. I don't know what Mr. Klein said, but when the man comes in to buy a policy, you are going to have to get a statement from him as to all of these collateral sources. He may not even know of them. In some instances you will have to probe. But there is no guarantee the collateral sources will continue for another day.

He is working for a corporation and they provide all of these benefits. Three days after he takes an auto policy he gets another job where they don't have the benefits. I don't know what your experience has been, but in New York where we have compulsory insurance on automobiles now, fraud in the inducement is no longer a defense on the policy. We still have to pay.

We can cancel the policy if we find out about fraud. But the cancellation isn't effective for 20 days after notice. We are still liable on that policy until that time. Now what are you going to do about a fellow who lies about his collateral sources? How are you going to remedy that?

You are going to have all kinds of chicancery going on and you are going to have to investigate this man to find out if he is insurable or not.

Mr. SUTCLIFFE. I think a number of different provisions you have pointed out will have to be closely examined. This is another example of that kind of problem.

Mr. CURTIS. When you have a compulsory plan, you can't really allow anything to interfere with the policy except conditions subsequent to purchase. You can't let a condition precedent interfere because otherwise you would not know whether the people were insured or not.

Mr. SUTCLIFFE. In your statement and in your oral presentation, you discussed the importance of cost savings from the accident environment as well as from within the benefit delivery system. Do I gather by those comments related to safer highways, better construction of vehicles, that you would support efforts for property loss reduction standards such as bumper standards for automobiles as a way of controlling costs?

Mr. CURTIS. Speaking for myself, very definitely so.

Mr. SUTCLIFFE. So you would support S. 976 before this committee?

Mr. CURTIS. That is the so-called bumper bill? Definitely.

Mr. SMITH. I cannot take a position on that question since I am not prepared on that point.

Mr. GHIARDI. However, Responsible Reform does spell out numerous highway safety bills in legislative form. The questions of seat belts and all of the other aspects are covered. It also indicates that we would support other types of highway safety reforms. Clearly, collision loss and property damage is the big item. Collision loss and property damage, in the insurance package today, accounts for up to, in some instances, two-thirds, if not more, of the premium. Efforts to reduce that, of course, are within the scope of our Responsible Reform.

We have not taken an official position on the bill but our statement does allude to the bumper bill as a step in the right direction.

NEW YORK PUBLIC LIBRARY

Mr. SUTCLIFFE. As long as you have mentioned the need for highway safety programs and the failures to date in many of the highway safety programs, how do you rationalize the present failure of the State jurisdictions under the Highway Safety Act to meet the 16 highway safety standards on an individual jurisdictional basis, with your statement about the need for each individual jurisdiction to look out after the citizens within the jurisdiction?

In other words, we have one area where we have left it to the States; there has been notable inaction. We are certainly going to examine that undertaking in considering what approach to take on any efforts toward automobile insurance reform that might be advocated by members of this committee.

Mr. GHIARDI. I think, Mr. Sutcliffe, if I can respond to that, when you get into highway safety, the qualifications of the driver, the implied consent law and things of this sort, you hit every person individually. You hit legislators very hard. The politics in safety programs is much higher.

Mr. SUTCLIFFE. Much higher than in this insurance?

Mr. GHIARDI. Yes. Take your solvency laws. Your bill on solvency laws produced action in 20-some States within a year. The McCarran Act. When Congress said put your house in order or we are going to do it, I think the McCarran Act immediately produced a long series of reforms in the insurance laws.

I think there are more people in the insurance area that can bring influence to bear in the thing. I think highway safety has been left to too many other people in the States. I think it has been done the same way in the Federal Government, to some extent. They are now starting to put some money into highway safety.

They are starting to look at the roads, the standards and things of this sort. Let's put in some new standards for driving. You are going to have to have a physical examination every year after age 65. Then we start looking around at all our drivers, and so forth, and the policy-makers, and that, and we certainly have a different problem there.

I think it's a factor and we have got to admit that there is a failure there. The media is so concerned with no-fault. If they put half the effort behind safety programs we would have better action. If our citizens' committees did, we would have better action. But we haven't quite gotten to that point.

We are now starting to see seat belt development with a little bit more pressure from the media, from advertising people and things of this sort. I think that is the answer to your question.

Mr. SUTCLIFFE. The National Highway Safety Administration was created by an act of Congress in 1966.

Mr. GHIARDI. We are very aware of that and our proposal parallels many of those standards and says we would support those on a local level.

Mr. CURTIS. May I just tell a very little story that illustrates that. A judge before whom I was trying a case had a neighbor who came and complained about a car speeding on this street and endangering the children. Through his efforts as a judge of our Supreme Court he had a police officer stationed there. The first one arrested was her husband who was rushing to get to work. Then she was beating on his door with an umbrella.

That is what you find on safety. That thing is carried out through the whole State. The legislators, when they want to pass safety regulations, come across all sorts of things like that and they are constantly being badgered in their home areas by their neighbors on just such points.

Mr. SUTCLIFFE. I urge that on the completion of this hearing record you look to the information developed for this committee by the Library of Congress as to the success of adopting uniform laws to meet critical social needs, particularly in the area of insurance reform.

Perhaps you can evaluate whether or not we have some similarity between insurance and legal reforms as well as safety reforms.

Thank you very much.

Senator HART. Again, thank you very much for your patience and your appearance here.

(The statement follows:)

#### STATEMENT OF WILLIS SMITH, JR., PRESIDENT, DEFENSE RESEARCH INSTITUTE

##### INTRODUCTION

My name is Willis Smith, Jr. I am the president of the Defense Research Institute. Also present are Samuel J. Powers, Jr., president of the International Association of Insurance Counsel; William E. Herod, president of the Federation of Insurance Counsel, and Reid A. Curtis, immediate past president of the Association of Insurance Attorneys. We appreciate the opportunity to appear and to express our views.

The Defense Research Institute is a national, non-profit organization with almost 6,000 members, headquartered at Milwaukee. Nearly all of our members are trial lawyers who come from all fifty states, Puerto Rico and Canada. These lawyers defend civil lawsuits and, in turn, are members of firms which comprise over 20,000 lawyers.

The Defense Research Institute was organized in 1960, through the efforts of the members of the International Association of Insurance Counsel, as a research and educational institute to promote improvement in the administration of justice and to enhance the service of the legal profession to the public. All of the lawyer members of the International Association of Insurance Counsel, organized in 1920, the Federation of Insurance Counsel, organized in 1936, and the Association of Insurance Attorneys, organized in 1935, are members of the Defense Research Institute. All three organizations have similar aims and objectives.

##### STUDY OF AUTO REPARATIONS

Our interest in the so-called "Auto Accident Reparation Controversy" arose at the inception of the discussion and debate of the subject. We soon saw that the matter had many facets which some persons tended to confuse and group together. In addition to questions relating to the operation of the legal system, there are also questions relating to insurance marketing, underwriting, rating and the like. These issues are separate and need separate attention. Our expertise is in the legal area. Even though the issues and problems posed are complex, simplistic solutions are being offered with the claim that they are panaceas.

We have found an almost complete lack of public understanding of the issues involved and of the alternatives being offered. This is illustrated by a Gallup Poll released late in April in which 1519 adults in more than 300 localities were questioned about auto reparations. Only four in ten responded that they had heard of so-called "no-fault" auto insurance. Only 19 percent of this 40 percent claimed that they understood "the plan." Eighty-one percent of that 19 percent, when asked if they approved or disapproved of "the plan," reported, according to Gallup's classification, that they were "uninformed or undecided." This poll supports our belief that people generally have never heard of "no-fault" insurance, do not understand the concept if they have heard of it, and are totally unknowledgeable concerning the shortcomings of the various proposals. We submit that proposed changes in the "fault" system are not supported by any public demand and are filing with this statement, as Exhibit A, a copy of an article,

*Surveys, Attitudes And Propaganda*, which was published in the April, 1971 issue of the Insurance Counsel Journal.

Because of all of this, we determined to study those problems which were within the range of our expertise as lawyers and to develop recommendations for solution. Almost before our work began, an unfortunate situation developed. Some who called for change of the present system claimed that anyone who opposed them must be blinded by self-interest. Some within our ranks urged us not to get involved because such criticism might be damaging. This committee should be aware that the defense bar, particularly those segments of the defense bar represented by the leadership of our four organizations, are of the opinion that their practices would not be seriously affected by the adoption of most of the auto reparation plans and proposals that have been offered. In fact, the defense bar could have an increased volume of work imposed upon it because of the amount of litigation needed to interpret the types of coverage which the new proposals are intended to provide. However, we firmly believe that the motoring public would be irreparably harmed by these proposals.

#### STUDY OF VARIOUS PLANS AND PROPOSALS

As part of our work, we studied the various plans and proposals which have been offered for change or modification of the present system of automobile accident reparations. It has been estimated that over fifty plans and proposals have been offered to date. When the legislative variations of the same plans are considered, the number may be closer to one hundred.

##### *"No-fault" an imprecise term*

Even though there are so many plans and variations of them, the media, in an effort simplify the issues for the public, has created the impression that there is only one clear-cut proposal which is being offered as an alternative to the present system. We constantly see reference to "the no-fault plan." In fact, the Gallup Poll to which I referred earlier asked as its first two questions: "Have you heard or read about the 'no-fault' plan dealing with auto insurance?" and "What is your understanding of this plan?" The term "no-fault" has been so misused that it no longer has any real meaning other than to describe one of the numerous insurance schemes by which a person insures himself against some form of loss he himself has suffered. Thus, "no-fault" can be used to describe medical payments, collision and comprehensive coverages precisely written as part of an auto policy, as well as any of the wide variety of plans and proposals suggested to change or modify existing auto insurance coverages.

In the context of our discussion today, it would be more precise to refer to the various plans which have been offered for auto reparations by three terms: (1) Complete Self-Insurance Proposals, (2) Limited Self-Insurance Proposals, and (3) Reform Recommendations.

Complete Self-Insurance Proposals include those plans such as S945, the American Insurance Association plan, the Rockefeller plan and others which would abolish the concept of individual responsibility, or almost completely abolish it, and which would compel each motorist to insure himself against the carelessness and recklessness of other highway users. The Limited Self-Insurance Proposals, such as the plans proposed by the National Association of Independent Insurers and the American Mutual Insurance Alliance, require motorists to protect themselves against certain economic losses but shift that loss to those who cause it and allow the innocent accident victim to pursue his legal remedy against the reckless or careless motorist. Finally, Reform Recommendations, such as those developed by the four defense lawyer groups represented here, the American Bar Association and others, seek to improve the present tort system—to make it more efficient, more equitable and less costly—within its present framework. Included in this category are reform proposals which have been instituted by the insurance industry in claims handling, rating, cancellation, non-renewal standards, and the like. These definitions are over-simplifications but they serve to place the balance of our testimony in a proper framework.

Our position on the general concept of self-insurance for auto accident reparations was clearly expressed in a statement by our former Board Chairman, Mark Martin, which was filed with the Senate Subcommittee on Antitrust and Monopoly Legislation on December 16, 1969. Copies of that statement, which we published under the title "Automobile Accident Reparation: This Road Toward Reform!" are filed with this statement as Exhibit R.

*S945—Compulsory insurance*

We are of the opinion that Complete Self-Insurance Proposals are not in the public interest and would not solve the problems they seek to correct. Copies of our Analysis and Critique of the American Insurance Association plan (Exhibit C) and the Rockefeller plan (Exhibit D) are filed with this statement. Because of the subject matter of this hearing, I will specifically discuss the reasons why we are opposed to S945. First, this plan calls for compulsory insurance. It would force all motorists to buy a form of accident and health insurance. The experience with compulsory automobile insurance in Massachusetts, New York and North Carolina does not instill confidence that a similar system should be enacted in all fifty states.

Motorists would be forced to buy this accident and health protection whether or not they needed or wanted it. This compulsion exists in the face of statistics which show that close to 80 percent of the population is protected by medical and hospital insurance and that over 75 percent of our labor force is protected by some form of wage continuation plan. These insurance and benefit plans pay for losses regardless of the type of accident, injury or illness that is involved. We would remind the committee that surveys clearly illustrate that the public has much dissatisfaction and the greatest number of complaints about its treatment under accident and health insurance. Now S945 wants to place the motoring public in this same position.

*S945—Excess insurance*

S945 lives on the collateral accident and health plans which are available to accident victims. It provides that payments under the plan will be reduced by the various insurance and benefit payments an injured person is entitled to receive from most other sources not connected with auto insurance. Thus, it would force many persons to buy insurance that is unneeded. It would force them to pay premiums for that unneeded insurance. Then, it would deny benefits to a person because he was prudent enough to protect himself and his family by the purchase of insurance and benefit plans which provide protection for every possible contingency—not merely auto accidents. This, of course, would only reduce the cost of auto insurance until those who provide the collateral sources make auto insurance primary by their contract terms.

It may be argued that it is necessary to have a plan such as S945 to supplement coverages provided by existing collateral accident and health plans. However, analysis of the DOT report entitled "Automobile Personal Injury Claims" reveals that of the 26,820 claims which were closed by insurance companies during the two-week study period, only 4.8 percent of the claimants had economic losses of \$2000 or more. The statistics noted previously prove that most claimants now have first party coverage for this loss.

*S945—Cost*

It is suggested that S945 would save money for premium payers by reducing auto insurance costs. As lawyers we do not claim to be skilled in actuarial science, but there are some observations which we can make.

(1) There is disagreement even among insurance actuaries as to whether the Complete Self-Insurance approach, or any particular plan, will result in lower cost. The actuaries, however, do agree that the problem in trying to cost such a plan lies in the fact that the lack of experience with this approach forces the use of many assumptions to arrive at a cost estimate. If the assumptions are not accurate, or do not prove to be accurate in actual practice, the estimate will be wrong. We would urge that the proponents of any plan who seek its support by claims of reduced cost be required to prove, by a preponderance of the evidence, that costs would actually be reduced.

(2) Even if S945 would result in lower insurance cost, the question is whether true or artificial cost savings are produced. The plan does not attack the root causes of auto insurance cost; rather, it seeks to reduce cost by redistributing and reducing benefits. As mentioned previously it lives on other insurance and benefit plans by refusing to pay benefits until the accident victim has used up collateral benefits. Thus it imposes a victim tax upon our prudent citizens. This saving could prove illusory. S945 also limits recovery to so-called "economic loss." In the case of economic losses such as income loss or the pecuniary loss suffered by a dependent of a person killed in an auto accident, artificial limits are established. Only 85 percent of income loss is paid up to \$1000 a month for 30 months and a ceiling of \$30,000 is established for death benefits.

(3) S945 reduces cost in a cavalier fashion by denying compensation, in most cases, for the pain, suffering and inconvenience suffered as the result of the carelessness or recklessness of another. Implicit in the denial of compensation for general damage in most cases seems to be the suggestion that there is something immoral about compensating a person for anything but a loss for which a signed receipt can be produced. Thus, a second victim tax is imposed by forcing a person who undergoes pain, discomfort and inconvenience as the result of another's conduct to bear that loss in stoic silence. The reason, of course, for eliminating this form of compensation is so that it will be economically possible to compensate those persons who cause accidents as well as their innocent victims. They reduce costs by reducing benefits. We submit that the motoring public does not wish this manufactured cost saving.

Even with all of these restrictions, limitations, setoffs, deductions and other provisions to restrict the type and amount of benefits payable, there is no assurance that S945 or any Complete Self-Insurance approach to auto insurance will provide lower cost insurance. This fact was confirmed by Secretary Volpe in prior testimony before this committee.

With the restricted benefits offered by the plan, S945 ignores one of the most costly items of the total auto insurance premium—coverage for damage to motor vehicles. It has been estimated that an average of 55 to 70 percent of the auto premium dollar goes to repair motor vehicles. There is nothing in S945 or any other Complete Self-Insurance proposal that would cut the cost of vehicle damage repair. Thus, savings in insurance premiums, if any, produced by the plan will only affect that small portion of the auto insurance premium paid for bodily injury coverage. We hasten to add that a first step in the direction of reducing vehicle damage cost is to be found in S976, The Motor Vehicle Information Act.

#### *S945—Inequity*

One of the most cruel myths which is being perpetrated upon the citizens of this country is that resort to a Self-Insurance scheme to completely replace the present system will produce greater equity. All too often reports appear in the media which assert that this or that "no-fault" plan will pay all losses sustained in an auto accident without regard to fault and without the need to seek compensation in a court. Because the stories are couched in general terms, no explanation is given of the fact that not all economic loss will be paid, that setoffs may be imposed, that pain, suffering, scarring, dismemberment and other general damages have to be absorbed by the victim or will only be provided for in one case out of a thousand. No mention is made of the fact that in addition to the compulsory coverages a motorist will be forced to buy, he will have to buy additional coverages, at increased premiums to fully protect himself. These additional coverages may include property damage liability coverage, collision and comprehensive coverages, personal injury liability coverages, and extended first party coverage to supplement the minimum limits offered under the basic plan.

These are the reasons we oppose S945 and other Complete Self-Insurance proposals. As noted previously, Exhibits C and D more fully explain our reasons. Though the plans differ in some respect from S945, they are similar enough for a clear understanding of their common shortcomings.

#### *S945—Impact on highway safety*

I have said before that the term "no-fault" is not a proper designation for these plans. In actuality the term "no-responsibility" would be a more apt description. If such a plan were enacted, persons would still drink and drive, speed or pass on hills; the only difference would be that careless and reckless motorists would not be held responsible for their conduct. Proponents of these "revolutionary plans" must assume the risk of increased carnage on the highways if they inform the American motorists that they are no longer responsible for their conduct behind the wheel of an automobile. Proponents have brushed this question aside or have tried to assert that it is not the driver, but his environment, that is responsible for most accidents. Lawyers who have seen the human misery caused by careless and reckless conduct behind wheels of high-powered vehicles can easily dispute such assertions. However, we sought to study the issue and to produce more than self-serving assertions.

In a thoroughly documented study, Lawrence Lawton, a long time traffic consultant from New York, has demonstrated that the present liability system supplies all possible deterrents to improper driving. He asserts that the adoption of a

Complete Self-Insurance approach to auto reparations would remove these deterrents and produce more accidents and a resultant increase in the deaths, injuries and economic loss on our highways. A copy of the summary of Mr. Lawton's work, "Fault—A Deterrent To Highway Accidents," is being filed as Exhibit E with this statement. Just recently, the Lawton research has been reinforced by the independent work of a well-known and highly respected psychologist, Dr. James Mancuso, of the State University of New York at Albany. His paper, "The Concept of Culpability: Its Utility in Promoting Proper Roadway Use," will be published shortly and will be made available to this committee if it wishes to examine his work. This expert in motivation warns public policy makers to avoid substituting radical change in the area of auto reparations for proved social policies and indicates that such action could result in social losses that far outweigh social gains.

#### THE PROPOSALS OF RESPONSIBLE REFORM

In addition to studying the various plans and proposals which would change and modify the present system, we sought to determine the problems which actually exist in the operation of the present system and to develop solutions to those problems.

##### *State action*

At the outset, a determination was made that if change is to come it must be approached at the state rather than the national level. Here, we are in accord with the recommendations of Secretary Volpe and the Department of Transportation. Not all problems have a national solution. What is beneficial for the citizens of the state of New York is not necessarily beneficial for the state of Kansas. Claims that the states will not act are totally unfounded. As can be seen from Exhibit F filed with this statement, 33 of the state legislatures which are now in session have various plans for automobile accident reparations before them. Carefully note that plans being considered vary from state to state. This demonstrates that legislators at the state level are concerned with developing a system that is in tune with the peculiar needs of their citizens. Auto reparation at the state level allows for experimentation and modification. As you are aware, a limited self-insurance plan became operative in Massachusetts on January 1 of this year. It is too early to tell how that plan will operate over the long pull, but it certainly should produce the experience and data needed to evaluate the feasibility of other proposals. Consideration of radical change should await this data. We would call the committee's attention to the Automobile Accident Insurance Act which has been in operation in the Canadian Province of Saskatchewan since 1946. The experience there does not make a case for radical change.

Because of our belief that state action is the essential course to follow in auto reparation reform, we sought to develop flexible proposals which could be implemented at the state level depending on the needs of the citizens of a given state.

Our initial work led to the development of the proposals found in our publication *Justice in Court After the Accident* which is filed as Exhibit G with this statement. That special report contains broad guidelines for improvement of the present system. We took the blueprint formulated in *Justice in Court* and developed specific recommendations in a Special Report, *Responsible Reform—A Program To Improve The Liability Reparation System*, filed with this statement as Exhibit H. The theory behind Responsible Reform is that the public is interested in a less costly, more efficient and more equitable auto insurance and reparation system. Though our action was prompted by the auto reparation controversy, many of the proposals in Responsible Reform, if implemented, would improve our entire system of jurisprudence. We hasten to point out that our proposals and research are offered for consideration and use in various states. As an organization we are not soliciting its adoption in any state.

##### *Reduced cost*

It goes without saying that the public is interested in less costly auto insurance. Even though the authors of a DOT report, "Price Variability In The Automobile Market," found that the national average price paid for automobile liability insurance (bodily injury and property damage, all limits, one-year protection) was \$70, we believe that something can be done to reduce insurance cost. The question is how the cost should be reduced. There is little doubt that cost can be

reduced by eliminating or reducing benefits—this is an artificial cost saving. We developed proposals that would yield real auto insurance cost reductions.

The last few weeks have seen many of our citizens marching in the streets of this city demanding our disengagement from the war in Vietnam. Those who protest our involvement claim that we have wasted too many human lives and too much of our nation's monetary resources because of our presence there. Yet, more persons are killed and maimed on our nation's highways in one year than the total number of our servicemen killed or wounded during our entire operation in Vietnam. Just as an end to the war will produce the only true saving in our nation's human and economic resources, no meaningful savings can be made in auto insurance costs until something is done to reduce the carnage on our highways. The Department of Transportation tells us that upwards of 25,000 persons are killed each year because of the involvement of alcohol in motor vehicle use. Yet, the ineffective laws dealing with drinking and driving indict legislators who are sworn to protect the public.

Those who advocate the Complete Self-Insurance approach to auto reparations, such as S945, are concerned only with results of automobile accidents. We determined to attack the root causes. The family and friends of those who are killed or injured by an intoxicated driver, or drug addict or a habitual traffic law violator would not be impressed by arguments that it is hard to tell who is at fault for most auto accidents or that the careless or reckless driver should be compensated as the equal of his innocent victim.

We believe that driving is a privilege and not a right; therefore, we have made a number of proposals to deal with accident producers. We believe that licensing laws should be used to remove incompetent and dangerous vehicle operators from the roads. Insurance rating and underwriting should not be relied upon as a means of removing highway menaces by governments which shirk their obligation to protect the public. We have proposed legislation for mandatory license revocations and fines for those who are convicted of driving while under the influence of alcohol or drugs and for the permanent revocation of the licenses of those who are habitual traffic law violators.

We also believe that persons should not be licensed to drive who are unable to safely operate a motor vehicle and that licenses should not be renewed if a motorist is blind, deaf or otherwise incompetent. We have proposed uniform licensing standards with periodic examination for driving competence.

Many persons are not using safety equipment now installed in vehicles. The use of this equipment could save much human life, and suffering. The National Safety Council has estimated that over 10,000 lives could be saved each year if seat belts, which are now standard equipment in all cars, were used. We have proposed legislation for the mandatory use of motor vehicle safety equipment including seat belts and motorcycle safety helmets.

As additional items leading to cost saving we have proposed in Responsible Reform to control contingent fees, to modify the Collateral Source Rule, to control fraudulent claims and to promote efficient use of the legal effort. Each proposal, if implemented, would reduce cost without resorting to artificial measures.

#### *Expediting claims settlement*

A number of proposals found in Responsible Reform are concerned with prompt payment to persons who are injured in auto accidents.

We wish to make it perfectly clear that we favor having first-party compensation for economic losses available to all persons injured in auto accidents who need or want such coverage. As noted previously, the great majority of our citizens now enjoy this protection from sources other than auto insurance. However, we are firm in our belief that the compensation should not be funded by depriving innocent accident victims of their right to receive full and complete compensation. Responsible Reform proposes that every auto liability policy covering a private passenger vehicle on a non-fleet basis provide minimum stated coverages without regard to fault. This coverage would include medical, hospital and related expenses, income loss and an accidental death benefit. In addition, uninsured motorist coverage would be required. These coverages would protect the named insured, members of his family residing in his household, and other occupants of the insured vehicle.

We differ in our approach to this coverage from those who propose Complete Self-Insurance. First, an insured who believes that he and his family are adequately protected by other insurance and benefit plans would not be forced to buy this coverage which for him would be unnecessary. He could reject this coverage as it affects himself and members of his household. He could not reject it

as it affects other occupants of his vehicle. They would be protected by their host's insurance unless they were afforded similar coverage by their own insurance.

Believing as we do in state-by-state evaluation based upon need, we did not set forth the coverage limits in our proposal. This can best be determined by the needs of the individual states. We cannot use the cost criteria of Washington, D.C. for Sheldon, Vermont.

Responsible reform would alleviate the problem of court congestion and delay where it actually exists. Our studies show that court congestion is limited to a small number of metropolitan jurisdictions and that auto accident cases are not the cause of delay. This is confirmed by the DOT study, "Automobile Accident Litigation," which found that only 17 percent of court time is spent on auto litigation and that delay in urban courts reflects the priority given to criminal as opposed to civil litigation. Delay is caused by the failure of our courts to keep pace of population growth and the explosion in the enforcement of individual rights. For this reason we have proposed the creation of new judgeships based upon population growth. We believe that persons accused of crime have the right to a speedy trial, but we also believe that tax-paying, law-abiding citizens have the right to a prompt disposition of civil litigation in our courts. Barring certain types of litigants from our courts to ease court congestion, when improved and modernized courts and procedures are called for, is a stop-gap measure which will only compound our social problems. It may be that \$945 would produce a reduction in the workloads of state courts. However, the question is whether the reduction will be due in large part to a shift of cases to the federal courts. As a federal act or law, many questions as to coverage and interpretation would be within the jurisdiction of the United States District Courts.

Responsible reform also calls for the implementation of an arbitration plan for all cases in which the amount in controversy is \$3000 or less, to be heard by panels of attorney-arbitrators. The procedure calls for a trial de novo in the courts if any party disagrees with the findings of the arbitrators. This procedure frees court personnel for other matters and, since the hearings are conducted in the arbitrators' offices, does not call for the use of courthouse facilities and personnel. This procedure is now working well in Philadelphia, where court delay for claims of \$3000 or less was reduced from 30 months to 30 days. It is now being expanded in that city on a voluntary basis to cases involving amounts between \$3000 and \$10,000, and it is being experimented with in other states.

We also believe that the insurance industry is doing much to expedite claim settlement with its advance payment programs and responsible reform contains a proposal to aid insurers in continuing and expanding this process. Much change has taken place in the past few years to improve the reparation system, and the advance payment technique is just one example. Unfortunately, as these procedures and changes are woven into the evolutionary process of the system, critics use data three, four or even five years old as arguments for their own proposals.

#### *Efficiency and equity*

Responsible reform also proposes to improve the equity and efficiency of the present system. There has been considerable debate over the merits of adopting a system of comparative negligence to replace the rule that contributory negligence is a complete bar to recovery. We have proposed that those states that wish to change their rule should adopt the Wisconsin rule and procedure for comparative negligence.

Before the current legislative sessions began there were 13 states which had adopted the comparative negligence rule. At the present time comparative negligence statutes are pending in 21 states. It is reported that Idaho became the 14th state to adopt a comparative negligence rule just last month. This also indicates that the states are acting to improve their reparation systems.

We have also made proposals in responsible reform for the modification, addition or elimination of a number of legal practices and procedures to make the present system as efficient and effective as possible.

#### *Future development and modification*

These then are the specific proposals of responsible reform. We are also pleased to note that proposals from responsible reform are appearing in the plans and proposals offered by other individuals and groups and are finding their way into various state houses as legislative bills.

When Responsible Reform was issued in October of 1969, the four sponsoring defense lawyer organizations made a commitment to re-examine our recommenda-

110 NOV 17 1969

tions in light of future developments and to modify and change our recommendations if evidence dictated that such action was in the public interest. A DRI committee is working on this task and we expect to be able to report on its activity after our Board meeting which will be held during the first week in July.

I referred previously to the so-called Limited Self-Insurance Proposals, such as those recently prepared and offered by the American Mutual Insurance Alliance and the National Association of Independent Insurers. The real, basic difference between those proposals and Responsible Reform lies in the fact that the limited plans established formulae for the determination of damages for pain, suffering, inconvenience and other elements of non-economic loss, usually referred to as "general damages." These proposals, the Massachusetts plan and other proposals of a similar nature are being carefully studied. A recommendation as to modification, if any, in our position on the subject will be contained in the June 29, 1971 report of the committee to be made to the DRI Board of Directors.

#### CONCLUSION

At the present time, the Congress has before it two proposals relating to automobile accident reparations. One, S945, calls for the almost complete elimination of the present system and the establishment of a Federal Complete Self-Insurance auto reparation approach throughout the country. This would be dictated without regard to the needs or wants of the citizens of each state. The other, the Concurrent Resolution recommended by DOT, would allow state legislators to determine the type of reparation system that best suits the needs and wants of their citizens. We favor the latter approach. We do not believe that all problems must have a national solution or, for that matter, that the auto reparation problems in all states are similar and call for a national solution. There is no particular virtue in uniformity, or the administration of a national insurance plan.

Allowing the individual states to act allows for flexibility, study and cautious evaluation. With all the uncertainty that has been expressed as to the actual impact that a change in the auto reparation system will have, state action is the most judicious approach to the problem. The states are acting and they are acting now.

We believe that it is possible to improve the present system—to make it more equitable, more efficient and less costly—all within its present framework. We have found no groundswell of public opinion for elimination of the principles of individual responsibility and individual accountability upon which the present system is based. We have found no groundswell of public opinion for the position that one who is injured or has his property damaged through the carelessness or recklessness of another should be forced to shoulder his own loss. It is quite true that the public wants less costly auto insurance and a more equitable and more efficient reparation system. However, it has not been proved to any degree of certainty that the Complete Self-Insurance Approach will satisfy the public's wants in those respects.

We have conducted our studies, and we continue them. We have pointed to the problems and difficulties which would result from the implementation of certain plans. We have developed our proposals to improve the system. We have not fashioned a panacea. Problems do exist and will continue to exist in the operation of any reparation system. Accidents will continue to happen. Our citizens will be injured no matter what type of plan or proposal is in operation. We suggest that in an attempt to solve certain problems, we do not create others which are more difficult to solve. We wish to assert that as lawyers we have a responsibility to protect the public interest and we can only do this by perfecting and maintaining the principles of individual responsibility and accountability.

Senator HART. Now, Miss Joyce Capps from the Women's Bar Association of the District of Columbia.

Miss Capps, you have been very patient with us.

**STATEMENT OF JOYCE CAPPS, REPRESENTATIVE, WOMEN'S BAR  
ASSOCIATION OF THE DISTRICT OF COLUMBIA**

Miss CAPPS. I enjoyed it, Senator.

Senator Hart, my name is Joyce Capps. I am appearing as a representative, at the request of the president, of the Women's Bar Association, a group of which I am a past president. It is an organization that is comprised of approximately 400 women attorneys. It is the oldest and largest women's bar association in the country.

I know the Senator and his group here must be as tired as I am, so I would just like to submit my statement for incorporation in the record.

Senator HART. It will be received and printed in full.

Miss CAPPS. I enjoyed the discussions more than the presentation of statements here this afternoon because I think it is a good way to clear the air. That way we find out what the Senators are interested in on behalf of the committee and perhaps with our experience we can aid the Senate by answering questions.

Senator HART. I would encourage you not to worry about the time. Having spent most of the day with us, if you would like to make some comments or react to certain things you have heard, we would appreciate it.

Miss CAPPS. Senator, at the outset, I would like to state that we are opposed not only to this bill, the Hart bill, but any no-fault bill, for all of the reasons that have been given today by these various organizations. There is the unfairness of it, the application of the anti-discriminatory aspect of it at the outset.

Why separate automobile accident victims from victims of other types of accidents or diseases? A person that is injured as a result of an accident is just as injured, suffers the same pain, suffers the same economic losses, inconvenience, discomfort, and anxiety as they would suffer from any other type of accident.

By analyzing the bill and any no-fault bill, we are of the opinion that it is taking away the rights of innocent people and creating rights for the people who cause the accidents. We think it is far better to fully and completely compensate the innocent victim first.

I think comparative negligence is important in this line. I wish we had it here in the District of Columbia, but we don't. I think it would be much fairer.

Another thing we are shocked by, at least some of our members, is this net economic theory that is incorporated in your bill. Many people are prudent enough and provident enough to provide for their family by paying the premiums that are required on loss-of-income policies and health insurance programs.

Another example is your Government workers here with their annual and sick leave. Some of these Government workers save this leave. They are almost hoarders. They just save it. Those are the types of workers you want, of course, people that don't abuse programs like that and they save it for a time when they need it.

This is an economic loss in this respect, Senator. If a person has annual leave piled up, he gets paid for that if he ever does leave the Government service. The sick leave he doesn't get paid for, but say he were to transfer from one Government agency to another Government agency. This looks good on his record if he is transferring, a large amount of accumulated leave. This is not an intangible in my opinion. I think this is a very tangible asset for a person to have. For someone else to benefit by it rather than the innocent party, I fail to see the logic of it. I fail to see the fairness or the equity.

I am not going to go over my little statement. It is only four pages and I don't want to waste the Senator's time. But I would like to make some comments about some of the questions you asked some of the others who were here today.

Senator, I represent a lot of cab drivers in this town. Nobody in this whole world can convince me that people do not drive carefully because of insurance. They do. They are concerned with that insurance. There are bad aspects in the insurance industry, and I am glad the Federal Government is trying to do something about it. But I don't think it should be done while you are infringing on the rights of innocent drivers.

Some of these hackers will come in, you know, and maybe they have had an accident. It wasn't their fault. But lo and behold, they were involved in one just 6 months before and they were rear ended. Again, it wasn't the driver's fault. But you can bet your gumdrops when his policy comes up for renewal it is not going to be renewed. I think this is very unfair.

After he has once been turned down on a renewal, there is no other company in the world that is going to touch him. So I think they do drive carefully.

Senator HART. I would tend to agree with you that this is a category where the insurance factor may indeed be a restraining influence.

Miss CAPPS. I think another instance is our children. You know, when they are thinking they are grownup and they have got the family car, I think they will be more careful. They know that daddy is paying a higher premium in order to let junior drive.

Senator HART. You represent cabbies and I won't quarrel with you as to what insurance means to a cab driver. I have got eight children and three cars. I don't buy your theory with respect to that.

Miss CAPPS. Don't you think your children are more careful driving because you have those added premiums?

Senator HART. No.

Miss CAPPS. And perhaps they might cancel you if the kids get in trouble?

Senator HART. No.

Miss CAPPS. They might, Senator, cancel you.

Senator HART. I think they are more deterred by fear of getting hurt or not having the car next week because it is in the shop getting fixed.

Miss CAPPS. I think it can be deterrent, though, for a lot of people to try to be careful drivers. You asked also if we had to have some kind of no-fault (which of course, we don't want) we would prefer a uniform Federal law? I agreed with the gentleman who said he saw no virtue in uniformity. I don't either because the needs of the

States are all different. That is, of course, why we have States' rights and autonomous State governments and things of this sort.

Another reason to be in opposition of this bill is that I don't see the reason for it any more. You know, I would have seen more reason, perhaps, for this bill 3 years ago than I do today. I am thinking of the court congestion and things of that sort. I think that court congestion became such a big word that it was almost public hysteria. There was the *Washington Post* doing their articles, and so forth. This had an impact. I think the Court Reform Act was a good thing.

I am down there just about every day and I have noticed many improvements there. This bill says, in a way, that the courts can't take care of their own problems by handling their workload. I don't think that is fair, Senator Hart. I think you are underestimating the boys who wear the black robes because they are doing a tremendous job down there. They are working long hours.

The Government has given us more judges, which is, of course, what we needed immediately. We are going to get more. There is no reason in the world why these cases cannot be handled expeditiously and well. Judge Green, the chief judge down there—I heard him in a speech down at the Greenbrier a few weeks ago at the convention of the administration of justice. He said it will take approximately 9 months from filing until final disposition of jury trial in a personal injury case. I think that is great. I think any sooner than that would really work to the disadvantage against the injured party.

I don't know whether I understand Mr. Sutcliffe's question or not.

Mr. SUTCLIFFE. I am not sure I did either.

Miss CAPPS. Did I understand you to say that there has been testimony before this committee about formalization for pain and suffering?

Mr. SUTCLIFFE. Actually in some of the insurance industry plans they will advocate the formulization of pain and suffering recovery. In fact, the testimony of the Defense Research Institute suggested there be a formalization for recovery of pain and suffering.

Our question was how you determine, if you are going to determine, where at the lower end of the intangible loss spectrum you are going to have a cutoff in order to avoid spurious intangible loss recoveries and thus make better use of the dollars collected by paying those people who are seriously injured.

Miss CAPPS. Under this tort adversary system we have had the juries doing it, 12 men true. Now down here we have six. But they are a very sophisticated bunch. You would be surprised when you get 12 men there together with all of their experiences. They are hard to fool.

Mr. SUTCLIFFE. I have no question about the viability of the jury system.

Miss CAPPS. When you demand a very low award, that is what you are going to get.

Mr. SUTCLIFFE. Some of these cases are not taken to trial because of the cost to the insurance company of processing the claims. Because of their nuisance value they are paid at prices higher than a group of 12 intelligent men would have afforded recovery.

Miss CAPPS. Maybe I am never in the happy position of having clients who will give them nuisance values. It seems like I can't settle

a case for beans in this town. You would want it to work, then, similar to workmen's compensation? You know, they have formulas.

Mr. SUTCLIFFE. We are inquiring into the methods of trying to reform the very system that you have mentioned and it presents some problems.

Miss CAPPS. I would like to present this fact as a little food for thought. I do some workmen's compensation, too. I would rather any day take a personal injury case, file suit in court, and in the District court here you can have your trial within 3½ to 4 months.

I have got workmen's compensation cases where there is very little involved and have been struggling for the last 2 years. I have got three on my desk right this minute. That is not the expeditious system that many people think it is.

Mr. SUTCLIFFE. We would agree with you and this is why we are trying to get most of the cases handled on a personal, first-party basis between the individual and the insurance company, having them pay for losses that occur and be done with it.

Miss CAPPS. It sounds good on paper.

Mr. SUTCLIFFE. We recognize there will be areas in which there will be disputes either as to the amount of damages or as to whether or not there was causation entitling the person to recover under the policy. In those cases we are asking what mechanisms would facilitate the recovery and get money into the hands of the injured person in the quickest possible way, and in the fairest and most equitable way.

Miss CAPPS. I am a great believer in arbitration. I love arbitration. I haven't had too much experience with it because it is still a fairly new animal, but under the uninsured motorists coverage they require this arbitration. My experience there has been great. But, of course, you do get your pain and suffering but it does do away with these delays you were talking about.

Now, I quarrel with the allegations of delays in our city. I don't think we have them in the District of Columbia any more. We did have a few years back but I think it is clearing up very well. Arbitration, I think, is great for your small cases. I think this catastrophic harm test is outrageous. When you think of a poor man whose leg is chopped off, the surgeon's bill could be \$75. This is not fair.

Mr. SUTCLIFFE. But we also think the fact that in our present system it is outrageous for people who have \$25,000 of economic loss or more, and they go to trial, that the average recovery is one-third of their economic loss. Forget the intangible loss. They do not get it and only 45 percent of all seriously injured victims recover. The other 55 percent do not get a dime from the tort liability system.

Miss CAPPS. You mean the people who were at fault? You know, a lot of counterclaims are filed just as a tactic.

Mr. SUTCLIFFE. No, these statistics are based upon the injured population, the number of people injured in automobile accidents. The 45 percent figure for recovery is based upon the Department of Transportation study. That means 55 percent receive no recovery from the tort liability system.

Miss CAPPS. Under your bill look how little anybody gets. Hardly anybody would get anything under your bill. I hate to say it but it is true.

Mr. SUTCLIFFE. Let me explain because you missed the opportunity to hear an exchange this morning. Under the bill presently drafted approximately 99.6 percent of all claimants will receive total compensation for economic loss, including lost wages, with no limitation for medical pay and rehabilitation costs and other economic loss for replacement services.

In addition, the people in the category of permanent injury, could recover all of their intangible loss through the tort liability system. The people not covered under this bill is in that area between some level of injury and permanent injury.

Miss CAPPS. I do not understand that last remark you made.

Mr. SUTCLIFFE. We are covering with the tort system, under the label of catastrophic harm, those people who suffer permanent injury. We are not covering—

Miss CAPPS. Yes, but your definition of permanent injury—but go ahead.

Mr. SUTCLIFFE. What we have not covered is 4.4 percent of the injured population. We are not allowing them to recover intangible loss claims but we cover all, or virtually all of their economic loss claims. So you see the only gap in the system at the present time is in an area of intangible loss.

Miss CAPPS. Statistics can show anything. We know that from the ballpark. But I do not follow you. I take issue with you there.

Mr. SUTCLIFFE. In the ballpark a 0.500 batting average is a 0.500 batting average. The only kind of inquiry you can have—

Miss CAPPS. But it depends upon the umpire who is calling it a ball or a strike. Somebody has to call it.

Mr. SUTCLIFFE. It also depends on how many times he has been at bat.

Miss CAPPS. This is my point on that very issue. I forget what the figures were because our organization did not—we do not have the money to do all these studies. But if I remember Mr. Markus right, it was phenomenal—only 2 percent, I think, of all the injured victims that were permanently injured that went into court, if my memory serves me correctly.

Mr. SUTCLIFFE. He said 1 percent and the Department of Transportation statistics show that permanent injury amounts to 7.6 percent of all injured victims.

Miss CAPPS. That seems very high from my own practice. I have only been practicing 10 years but I would say around 2 or 3 percent probably is the more accurate figure, just from my experience. So you have got your 97 percent of the people whose main recovery is going to be for their pain and suffering. A woman could not scrub that floor or lift up her baby.

Mr. SUTCLIFFE. This is what was very interesting about the Department of Transportation study. Of the people injured in automobile accidents there were approximately 88 percent of the people were not what the Department of Transportation considered seriously injured. Their serious injury level was either \$500 of economic loss or 14 days of hospitalization. So you see when you compare the number of seriously injured, permanently injured, to those who would have a chance to recover intangible loss otherwise, you do not have a comparison between the permanently injured and the total accident population.

You only have a comparison between the permanently injured and the other category of people injured who would be eligible either through the tort system or whatever arbitrary line you may go for intangible loss recovery.

So rather than a relationship of, say, 3 percent to 97 percent, it is a relationship of 7.6 percent to 12 percent to the total injury population, or about 66 percent of the intangible losses are covered right now by the Hart bill and we are looking to see if we can recover the rest of the intangible loss.

Miss CAPPS. That uses a lot of the premium dollar to take care of the party at fault. We are against that. We do not care about the party at fault, especially in this day and age when there are so many collateral benefit sources for him.

Mr. SUTCLIFFE. You see, the seriously injured victim in the Department of Transportation study, on an aggregate basis, had \$5 billion of economic loss. Mind you, this is not talking about injuries; they only recovered \$2.5 billion of that from any source.

Miss CAPPS. That is from the permanently injured.

Mr. SUTCLIFFE. No; seriously injured.

Miss CAPPS. I quarrel with figures sometimes. We all do it. If you have got a serious case—now, I just want to give you this example because it is a real case. There was a 5-year-old out on his bicycle. He ran into a Schlitz beer truck. The front right wheel of the beer truck knocked him off his bike and the back tire of the truck literally went over the boy's chest. Luckily the bicycle, on top of the chest, kept him from being killed right then and there. This boy had very serious injuries.

He went to something like four or five different lawyers and they said, well, the liability is very bad, to say the least. By the time he got to a lawyer that finally expended the necessary money required to investigate the matter, sending an investigator out to see if there were witnesses around, this was a 2½-year-old case. Witnesses leave by that time. And it cost money for a lawyer to invest in an investigator to see if there is any liability that can be grasped there.

The lawyer filed the suit. It was a very touchy suit. There was not an offer, not penny one offered to settle that suit. Nothing for the medical and nothing for anything else. The parties involved, the little boy's parents, were on welfare so he was taken care of. But the boy will for the rest of his life have a tracheotomy tube in his throat. He was a deaf and dumb boy in the beginning, so it will impair him in learning to talk through Gallaudet.

When that case went to court I am convinced that there was not really liability there. You know what I mean by that. An injury could go either way. But there was the target defendant, the Schlitz beer truck. There was a dream of a little client, a little 5-year-old boy. He got something.

So you get these compromise verdicts. No, he did not get as much as he would have gotten had he been in the crosswalk and obviously it had not been his fault. So you get these compromise verdicts many times in very serious cases, because the lawyer has no alternative as a plaintiffs' lawyer but to file that suit. If there is the slightest chance in the world you go the full route, especially when you have got a dream client like a cute little 5-year-old kid with serious injuries.

So you get your compromise verdicts there. So when he says there is only this much recovery and that much recovery, we do not know how many of those were compromise verdicts. We just do not know. I venture to say many of them.

Mr. SUTCLIFFE. Of course this kind of compromise will take place more under comparative negligence operations.

Miss CAPPS. Yes, it would. I think comparative negligence is a great thing. I really wish we had it here. It would make it much easier to settle any kind of case if we had it here. When you are dealing with justice adjusters day in and day out they know what the burdens of proof are and all that. Of course the plaintiff's lawyer is a little bit worried because maybe his man was a teensy-weensy bit negligent, you know. So it makes settlement a little bit hard here in this jurisdiction but we do it.

All of us settle 9 out of 10 of our cases. It is an established principle that lawyers will settle their best cases, really. You settle your best cases because the insurance companies are willing to settle. They want to settle with you if it is a best case. They will settle with you. You don't have any trouble on those. It is your dogs that you have trouble with, where there is very sticky liability.

There may be hardly any special damages; you know, like a \$50 bill of a lady that has bad back trouble but it is not bad enough for an operation. She is the type that can tolerate a lot of pain. A lot of men don't want to be sissies and keep going back and forth to a doctor so they say, I can get my treatment at home. What do I want to go to a doctor for?

I think we should encourage persons who can treat themselves at home rather than padding the bills. A formulized pain and suffering thing would encourage padding bills, something that no reputable plaintiff's lawyer should do, in my opinion. You have to take the bills as they are submitted to you by your clients. If that formula were explained to them they would be running around getting bills, you can bet your boots on that. I don't think that is good at all. It costs \$75 for the surgeon to cut our leg off. And then the pain and suffering for that chopped off leg, having to go the rest of your life without it, based on 50 cents on the dollar. I don't get it.

Mr. SUTCLIFFE. I think the committee has received much testimony suggesting that that is not a very satisfactory way to determine who should or who should not be eligible for intangible loss.

In your experience as a trial lawyer in Washington, D.C., have you seen an abuse sometimes of the liability system where people will try to get intangible pain and suffering losses when they are not really entitled to them? Do you see this in your experience?

Miss CAPPS. I had one case in my 10 years, but I don't know how the other attorneys handled it. I have been a member of the Association of Plaintiff's Trial Attorneys for the whole 10 years so I am in contact with most of the plaintiff's lawyers here in town. Most of them feel as I do. We are too busy as it is. We don't want such a plaintiff's case—if I have the slightest indication that such a thing is involved. I can say I have a splitting headache and I might not have it at all.

Well, in a few instances I have doubted the credibility of my own client but I would rather find out than drag that thing through court and have the other side find out because I don't want to waste my

time. In the second place I don't want to ruin my reputation among the defense bar.

So you send that client, or I do, the few I send, to an orthopedic surgeon here in town that I know is going to give me a good report, a fast report. I get it back. If he says there is nothing wrong with that person then I don't take the case and I am stuck with a \$35 examination fee for that person but it is worth it not to take a case like that.

By the same token I have had many a case where a person would keep complaining they were hurting because their back was nagging and you think they are really making a mountain out of a molehill or something but you might be embarrassed 4 or 5 months later to hear from her daughter that she is in traction in such and such a hospital.

On contingent fees, I am speaking here on behalf of the Women's Bar. Most of the women lawyers here in town do not practice personal injury law. So they would have no interest whatsoever in contingent fee arrangements. But they also are for continuation of a contingent fee.

In theory they espouse all of the comments made by the American Bar Association almost right down the line.

And as a plaintiffs' attorney, of course, 90 percent of my living comes from contingency fees. I am a believer in it because I think a lot of people are represented that otherwise would not be. But I think the contingent fee arrangement should not be regulated by a Federal statute or even by a municipal regulation or a local statute. I think it should be by the court.

Your judge is the one who sees the amount of work you have done and should be able to assess a fair contingent fee. We have the contingent fees in your Federal Tort Claims Act and there the judges, of course, always set your fee. It cannot be over 20 percent in the Federal Tort Claims Act, but it can be less. The judges always set the fee there, and neither the plaintiffs' lawyers that I have talked to or the Women's Bar would be opposed to some type of limitation of the contingent fees.

Senator HART. Just one thing about the District of Columbia, and it relates to the bill that we are considering because it becomes mandatory for one who has a car to have insurance. It is my understanding that about a third of the drivers in the District of Columbia are not insured.

Miss CAPPS. I would agree to that probably.

Senator HART. At least to this extent there would be a public benefit as a consequence of the bill's requirement that you not register an auto unless you have it.

Miss CAPPS. Senator Hart, we are in favor of some aspects of your bill. I do not want there to be a misunderstanding here. I have directed my comments to the straight no-fault. We are tickled pink that you want to try to have some consistency about insurance policies and the cancellation of them and the renewal of them. I think this is good. This is real good. I am completely in favor of compulsory insurance.

I know a lot of trial lawyers disagree with me, but I would like to see that.

Now, I understand that the D.C. Bar Association right now has written a bill, I forget who introduced it, it was done this year any-

U. S. DEPARTMENT OF JUSTICE  
DIVISION OF RESEARCH AND STATISTICS  
WASHINGTON, D. C. 20530

way—of course, I am not on that negligence committee this year, so I have lost sight of it, but I know it has been introduced—our own uninsured motorist protection bill which is very good. It was worked on for 11 years by that committee, and it is a very good bill, and it is a step in the right direction. I still do not know what you are going to do about the drivers. Even if you have an uninsured motorist bill they will still get into somebody's car and drive it.

There is no way to really enforce these things except to make it rough on them when they are caught, and, of course, we are in favor of fair and stringent laws.

Senator HART. You are right, whatever law you pass, whether it is gun permits or mandatory auto insurance, there will be a guy that gets the gun and who has a car and a license for neither.

Miss CAPPS. Senator, could I ask you a question just out of curiosity?

Senator HART. But there is at least this benefit to compulsory insurance. If you condition titling of the vehicle on proof of insurance, you have got a lever.

Miss CAPPS. Right.

What would be wrong with just having a bill requiring mandatory liability insurance and your uninsured motorist and your medical payments coverage? Wouldn't that serve the purpose of your bill?

Senator HART. Well, at this late hour, all I can content myself with in reply is I think not.

Miss CAPPS. Because, you know, I was reading the bill and I could see what you were trying to do, but it seemed like to me it is just not the way to do it with all due respect to you. I respect you that you are doing something, but I wish you had been thinking about something else when you were thinking about some of these things, because I do not think they are workable or fair, and that is the most important thing. I do not think it is fair to do away with a centuries' old, time-honored, proud adversary system, and if the automobile cases go out the window, what is going to be next? You know, it kind of scares you a little bit.

Senator HART. I would say probably the next area would be one which has the social consequences that flow from the fact that so many people now do not get recovery under the existing system.

Miss CAPPS. You know what I would like to see, I would like to see a compulsory arbitration for something, say, under the \$1,500 case. But how are you going to determine what the \$1,500 consists of—your out-of-pocket expenses or that lawyer's valuation? He knows what a \$1,500 case is, taking into consideration the tangible out-of-pocket expenses and the type of injury it is, because you cannot have one without the other to determine value of a case.

Say, under \$2,000, \$1,500, compulsory arbitration, and that would take—you say two-thirds of your cases are the property damage, I think definitely the property damage cases could go out of court. I think the judges would appreciate that, and we have a tremendous volume down there, subrogation claims and things of that sort.

I think everybody would kind of like to see that, except they are always scared of the door opening. They say wait a minute, if we give in on that point then they will enlarge this, then they will raise the figure. Maybe I am just not as suspicious as some of my colleagues in the law. But I think it would be a good thing.

UNIVERSITY LIBRARY

Senator HART. Miss Capps, I have enjoyed the exchange, and I want to repeat again our appreciation that you were patient with us as the day went along. I begin to get the feeling when this record has been made together with the consideration that is going on over on the House side that all of us will have a better understanding of where the inequities are under existing practices and what change is most likely to respond to those inequities.

Clearly the bill as introduced by Senator Magnuson and me will be revised in light of the kind of record that we make here. So with you I hope at the end of these hearings we can say that we have made some improvements. Of course, I do not think anybody can claim perfection for a human institution, but improvement I hope will follow.

Miss CAPPS. I thank you for having me, Senator.

Senator HART. Thank you.

Miss CAPPS. Good night.

(The statement follows:)

STATEMENT OF JOYCE CAPPS, REPRESENTATIVE WOMEN'S BAR  
ASSOCIATION OF THE DISTRICT OF COLUMBIA

My name is Joyce Capps. I am appearing as a representative of The Women's Bar Association of the District of Columbia, and I am testifying today relative to Senate Bill 945. The following remarks are my views and those of my association on this subject of No-fault Auto Insurance:

We are opposed to the "no-fault" aspect of this bill because (1) it *abolishes* the basic right of the innocent victim of a negligent driver to be wholly and completely compensated for injuries sustained, while it *creates* benefits for the negligent and careless driver, and holds him harmless for the consequences of his wrongdoing, (2) by virtue of the "net economic loss" provisions, it prevents the injured person who was prudent enough to accumulate annual and sick leave and to pay premiums for accident, health, and loss-of-income plans from reaping the rewards of such prudence, (3) it discriminates against victims injured in motor vehicle accidents as opposed to other types of accidents, and (4) it particularly discriminates against persons not gainfully employed, such as housewives, children, and retirees, as well as the survivors in death cases. We consider the fourth objection to be especially unpalatable.

The unfairness and inadequacy of the bill are readily apparent when applied to situations. For example, an 8-year-old child is playing on the sidewalk. The drunk driver of a speeding automobile strikes a parked car, loses control and goes up on the sidewalk, strikes the child, and then crashes into a cement wall. As a result, the child sustains fractures to the femur and patella, a brain concussion, and traumatic epilepsy. She is hospitalized for two months during which time her leg is in a cast and for the first three days is in a coma. Even after leaving the hospital there are numerous return visits to the physiotherapist and doctor. Her residuals consist of a slight limp due to atrophy, several surgery scars, and epileptic seizures. Not until she reaches puberty can a prognosis be made as to whether her epilepsy will continue to be violent or will be such that it can be controlled with daily medication for the rest of her life. Under this bill only the "appropriate, reasonable, and necessary" medical expenses would be recovered. However, her parents would only receive \$1,000.00, because her father's family medical plan paid all but that amount. There would be no recovery for the excruciating pain and agony; or for the difficulty and frustrations in learning to walk with crutches; or the fear and anxiety of perhaps never being able to walk again; or missing a semester from school and the resulting embarrassment and humiliation of returning to school in a class behind her former schoolmates with children younger than she; or having to wear a corrective shoe to compensate for one leg being slightly shorter than the other; or not being able to skip rope, play dodge ball and all the other games little girls play; or the fear and embarrassment of blackouts and seizures which could result in further injury; or the headaches and muscular pain after a seizure; or in later years not being permitted to drive a car or operate any type of machinery, etc.

On the other hand, the drunk driver is a heart surgeon earning \$120,000 per year. He sustains injury to his wrist resulting in traumatic arthritis, and is unable to perform surgery. In addition to his medical expenses, he would recover \$30,000 in lost wages.

But the young housewife who sustains traumatic arthritis to her wrist and whose favorite pastimes are bowling, crocheting, and knitting, would not recover for her inability to perform normal household chores, such as scrubbing floors, washing windows, ironing, etc., nor for her inability to any longer engage in those activities from which she derived so much pleasure and enjoyment.

When a dog is struck by a negligent driver, his owner can recover only veterinarian expenses and the animal hospital costs. There is no recovery for the dog's pain and suffering because a dog is considered to be nothing more than personal property.

By the stroke of a pen this bill would abolish the fundamental concepts of human rights and dignity which for centuries have been inherent in our tort system—and would place an injured human being in the same position as an injured animal or a piece of personal property whose only compensation would be the amount of money required to patch him up again.

Furthermore, it is conceivable—and even probable—that this bill would create more litigation than it hopes to prevent. Legal interpretations and constructions will have to be made of the terms "catastrophic harm," and as to what constitutes reasonable expenses necessarily incurred, etc. Who makes the initial determination? Would the child in the example above have been able to recover all of her elements of damage had she been injured by a pipe falling from the back of a truck because it had not been properly secured?

Gentlemen, this bill is not the answer to the public concern about auto insurance. The answer lies elsewhere in such areas as court reform, more stringent licensing laws, better auto safety design measures, etc.

Senator HART. We adjourn to resume at 11 a.m. tomorrow in this room.

(Whereupon, at 5:25 p.m., the hearing was adjourned, to reconvene at 11 a.m., Thursday, May 6, 1971.)

(The following information was referred to on p. 599.)

U. S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D. C.

Commonwealth of Massachusetts

SUPREME JUDICIAL COURT

For the Commonwealth

Suffolk County

May Sitting, 1971.

In Equity, No. 7550

---

MILTON PINNICK

v.

CARL CLEARY

---

---

AMICUS CURIAE BRIEF

SUBMITTED

IN

BEHALF OF

THE

**AMERICAN TRIAL LAWYERS ASSOCIATION**

*At the Roscoe Pound-American Trial Lawyers Research Center*

80 GARDEN STREET, CAMBRIDGE, MASSACHUSETTS 02138

BY

RICHARD M. MARKUS

WILLIAM SCHWARTZ

---

(683)

TABLE OF CONTENTS

	<u>Page</u>
Summary of Argument. . . . .	I
Argument	
I. The Statute Denies Due Process Since It Arbitrarily Abrogates Fundamental Rights . . . . .	1
A. Due process preserves and protects rights, systems, and processes which are fundamental to the American scheme of justice . . . . .	2
B. The right to recover for personal injury cannot be abrogated without due process of law since it is fundamental to the American scheme of justice . . . .	3
C. The statute unconstitutionally abrogates and seriously interferes with the fundamental right of personal security and bodily integrity . . . . .	5
D. The statute is unconstitutional since all of its possible purposes could have been achieved by alternatives which were less restrictive of fundamental rights . . . . .	12
E. Assuming, arguendo, that the legislature did not have to adopt a less restrictive alternative, the statute is still unconstitutional since it bears no reasonable relationship to a proper legislative purpose . . . . .	21
F. The statute cannot be sustained by drawing an analogy to workmen's compensation . . . . .	30
II. The Statute Violates The Equal Protection Guaranty Of The Massachusetts and Federal Constitutions. . . .	34
A. The act denies "equal protection" to tort victims suffering general damages. . . . .	38
B. The act denies equal protection by invidious discrimination against the poor. . . . .	43
C. The act denies equal protection for a substantial number of persons suffering human losses . . . . .	45
D. The act denies equal protection "for tort victims suffering economic loss" . . . . .	46
E. The act denies equal protection to tortfeasors . . . .	49

III. The Act Confiscates Fundamental Rights By Imposing Unconstitutional Conditions . . . . .	51
Appendix A	
A few actual cases for which general damages would have been barred by new act . . . . .	52
Appendix B	
Letter pertaining to lack of congestion and delay . . . . .	54
Table of Authorities Cited. . . . .	55

SUMMARY OF ARGUMENT

The right to recover for personal injury is a fundamental right which cannot be abrogated without due process of law. A state cannot abrogate a cause of action for redress of injuries without substituting another, adequate remedy in its place. This statute unconstitutionally abrogates the rights of vast numbers of people to recover for human losses. The fundamental rights of large classes of persons have been confiscated without the substitution of any remedy at all since the abrogation of the right to recover for human losses is not dependent upon the availability of personal injury protection benefits. Even when available, personal injury protection benefits are hardly an adequate substitute since they prey upon collateral benefits presently secured to the overwhelming majority of accident victims and are reduced by these collateral benefits which victims have procured by other means and from other sources. Furthermore, to the extent personal injury protection benefits are payable, it will result in the tortfeasor being immunized from liability for special damages. This is not a substitute but a cruel fiction (pages 1-11).

This Act lies in a constitutional zone in which a statute is deemed to be violative of due process if its purposes could have been achieved by one or more narrower alternatives which would have been less restrictive of fundamental rights. This principle requires the legislature to employ "the narrowest workable means of accomplishing an end." The statute is unconstitutional since all of its possible purposes could have been achieved by alternatives which were less restrictive of fundamental rights. No rush should have been made to an unproven plan which denies basic rights (pages 12-20).

The statute is unconstitutional even under the standard that the legislation need only have a "reasonable relation to a proper legislative purpose." Again, a review of the statute's possible purposes demonstrates that the Act has no rational relationship to any conceivable legislative or community valued purpose (pages 21-29).

The statute cannot be sustained by drawing an analogy to workmen's compensation. The abrogation of common law remedies is elective under Workmen's Compensation. Under this statute, the injured victim is offered no such election or choice. The decisions sustaining the constitutionality of Workmen's Compensation rested on the idea that both employers and employees received advantages under the new system which could be balanced against the common law rights which they lost. This statute fails to provide an adequate substitute for the remedies it has abrogated. There is a great difference between the common law system for industrial accidents (and the desperate plight of workmen thereunder) which workmen's compensation was created to replace and the common law system for auto accidents.

The widespread theory prevalent at the time of the adoption of Workmen's Compensation was that by placing the cost of compensation on employers the cost would be passed on to consumers. There is no one in the auto situation who occupies a similar role--no one who could be regarded as being in a position to pass on the costs to consumers via the operation of market forces. The issue to which Workmen's Compensation is addressed is primarily that of determining terms and conditions of employment. The law, in effect, compelled the employer to provide, as a term of employment, an industrial accident policy for his employees. Unlike Workmen's Compensation, there is no contractual nexus on which auto compensation plans can build (pages 30-33).

The statute is violative of the equal protection guarantees of the federal and state constitutions. The equal protection guaranty proscribes legislation which classifies citizens by characteristics that are arbitrary or capricious, by characteristics that have no reasonable rational relationship to the legislative goal, and by characteristics that are manifestly beyond the control of the regulated persons. In addition, less legislative latitude is permitted when the statute affects a "fundamental right." In such circumstances, the courts demand an embracing classification which avoids any exclusion of persons whose inclusion would have been compatible with the legislative goal. Furthermore, if there is an "inherently unreasonable" classification or "suspect classification" the courts will require extraordinary justification for the statute. The Act is unconstitutional since it abrogates the fundamental right to recover compensation for injuries by classifications that are arbitrary, unreasonable and capricious and which invidiously discriminate against the poor--an "inherently unreasonable" classification (pages 34-37).

The Act's irrational classifications result in denial of equal protection to tort victims suffering general damages (pages 38-42), and special damages (pages 46-48). The Act denies equal protection by invidious discrimination against the poor (pages 43-44). The Act denies equal protection to tortfeasors (pages 49-50).

This Court held the rate reduction section of the Act unconstitutional. If the legislature cannot confiscate business interests, it certainly cannot confiscate human values (page 51).

dominated the focus of public attention and discussion, these constitutional developments are equally relevant to civil litigation. As an Ohio court so aptly and dramatically stated:

Thus, this statute must be declared unconstitutional since it violates the due process guarantees afforded by the state and federal constitutions. \*

-1-

A. DUE PROCESS PRESERVES AND PROTECTS RIGHTS, SYSTEMS, AND PROCESSES  
WHICH ARE FUNDAMENTAL TO THE AMERICAN SCHEME OF JUSTICE.

Attempted scholarly justification for this type of statute has been predicated upon a now discarded and repudiated view of due process. Thus, Professors Keeton and O'Connell, the academic progenitors of this type of statute, sought to justify their plan on the grounds that a holding of unconstitutionality would "put the Supreme Court in the position of condemning the way in which the vast majority of cases are tried in most of the civilized world." See Keeton and O'Connell, Basic Protection for the Traffic Victim, page 496 (1965). Professors Keeton and O'Connell relied upon an earlier standard which has now been overruled by Duncan v. Louisiana, 391 U.S. 145 (1968).

Although Duncan was a criminal case, it has (as indicated above) significant ramifications for civil litigation as well. Writing for the majority of the Court, Mr. Justice White stated:

"Earlier the court can be seen as having asked. . . if a civilized system could be imagined that would not accord the particular protection. . . . The recent cases, on the other hand, have proceeded upon the valid assumption that state criminal processes are not imaginary and theoretical schemes but actual systems bearing virtually every characteristic of the common law system that has been developing contemporaneously in England and in this country. The question thus is whether given this kind of system a particular procedure is fundamental. . . . A criminal procedure which was fair and equitable but used no juries is easy to imagine. . . . Yet no American state has undertaken to construct such a system." 391 U.S. 149-150, n. 14 (emphasis added).

Thus, the new testing ground is broadened to the standard of whether a right, system or process is "fundamental to the American scheme of justice." See Note, 82 Harvard Law Review 148, 151 (1968).

**B. THE RIGHT TO RECOVER FOR PERSONAL INJURY CANNOT BE ABROGATED  
WITHOUT DUE PROCESS OF LAW SINCE IT IS FUNDAMENTAL TO THE  
AMERICAN SCHEME OF JUSTICE.**

It is submitted that the common law system of providing redress for accident victims is fundamental to the American scheme of justice. No other American state has seen fit to construct an alternative system.

The common law system has deep historical roots in Anglo-American jurisprudence. See Petitioner's Brief, pages 11-35. The right of personal security and bodily integrity is a fundamental right. "The right of life and personal liberty are natural rights of man." United States v. Cruikshank, 92 U.S. 542, 553 (1875). The constitutional shelter afforded personal security and bodily integrity by Due Process is graphically illustrated by cases condemning illegal searches and seizures. See e.g., Rochin v. California, 342 U.S. 165 (1952). In addition, this Court, in Mulvey v. Boston, 197 Mass. 178, 183 (1908) described an action of tort for personal injury as a valuable right and that it might be treated as coming "within the protection of some of the broad provisions of the declaration of rights in the Constitution of Massachusetts."

Surely, in a civilized society, there can be no more basic or essential right worthy of judicial protection than the right of the individual to be secure and inviolate in his own person. Can any right be more fundamental? The society which readily extends protection to such matters as speech, press, religion, association, and travel cannot afford to be less responsive to the necessity that personal security and bodily integrity be preserved.

Society cannot afford to do less for its own sake. As history has leaped the arc of the centuries, tort law has been a major guardian of the institutions which are central to our civilization. The moment two men co-existed in the world, the creation of a law of torts became imperative, as an alternative to anarchy--no law (the law of fang, tooth and claw), or tyranny (one-man or group rule). In the modern world, with its menace of incineration, the mission of the law of torts is the stabilization of society by adjusting competing social and individual interests, with a minimum of friction, through rules based on reason and tested by experience.

In light of its central importance, a heavy burden of justification is cast upon those who would seek to alter substantially this essential element of civilization by abrogating valuable and traditional cherished fundamental rights.

C. THE STATUTE UNCONSTITUTIONALLY ABROGATES AND SERIOUSLY INTERFERES  
WITH THE FUNDAMENTAL RIGHT OF PERSONAL SECURITY AND BODILY  
INTEGRITY.

The statute does not effect a mere minor change in this fundamental right. It has a revolutionary thrust and seriously impairs and distorts one's right to personal security and bodily integrity.

Under the statute no one (subject to certain minor or limited exceptions) can recover for pain and mental suffering unless the reasonable and necessary medical expenses incurred are determined to be in excess of \$500.00.

By the common law, it is axiomatic in personal injury cases, plaintiff is entitled to compensation for his entire loss--his loss of earnings or earning capacity, his medical expenses, and his general damages for disability and conscious pain and suffering. See McCormick, Damages 88 (1935); 2 Harper & James, Torts, (1956) §25.10; 4 Restatement of Torts §905, 924; Morris, Liability for Pain and Suffering, 59 Colum. L. Rev. 476 (1959); Olender, Proof and Evaluation of Pain and Suffering in Personal Injury Litigation, 3 Duke L.J. 344 (1962); James, Supplement to Vol. 2, Harper & James, Torts (1968) 141-145. By completely eliminating compensation for general damages, the proponents of no-fault auto compensation plans affront the common-law mandate that dignitary losses of man are compensable.

The statute's deleterious treatment of human losses will impose a serious detriment upon almost every victim. Studies made by the United States Department of Transportation reveal that 78.9 per cent of paid claimants suffered a total economic loss (including wages and matters other than medical expenses) not in excess of \$500.00. Automobile Personal Injury Claims, Vol. 1, Table IV-2, p. 30 (Dept. of Transportation 1970).

"[T]here is abundant authority for the proposition that the state may not altogether abolish a cause of action for redress of injuries without substituting another, adequate remedy in its place." Ruben and Williams, The Constitutionality of Basic Protection, 1 Conn. L. Rev. 44, 46 (1968), citing as authority In re Opinion of the Justices, 211 Mass. 618, 98 N.E. 337 (1912). This conclusion is buttressed by Truax v. Corrigan, 257 U.S. 312 (1921). In Truax, the Supreme Court held that the state could not constitutionally deprive its courts of jurisdiction to enjoin conduct in the course of a labor dispute which the Court characterized as tortious and for which the Court said there was no adequate remedy at law.

Supporters of this type of statute sometimes seek to rely upon Hanfgarn v. Mark, 274 N.Y. 22, 8 N.E. 2d 47 (1937), appeal dismissed, 302 U.S. 641 (1937), and Silver v. Silver, 280 U.S. 117 (1929). Both cases are clearly inapposite and readily distinguishable. Hanfgarn sustained the constitutionality of a statute abolishing actions for alienation of affection, on the grounds that the legislature might have reasonably believed that the cause of action (alienation of affection) produced greater evils than those which it was created to remedy. The fundamental right to recover for pain and suffering can hardly be placed in the same category. In Silver, the Supreme Court sustained the constitutionality of a guest statute which required a showing of aggravated wrongdoing as a prerequisite to recovery. The court did not sanction the abrogation of the right to recover full damages (as this statute does). Rather, it sanctioned a modification (consistent with the fault principle) of the degree of culpability required for recovery. Those who proved aggravated wrongdoing would recover full damages. Furthermore, Silver would appear to be a slender reed to rely upon. As one learned commentator has observed:

"That Silver was something of an embarrassment to the court itself seems apparent. It is a decision which has been afforded an atypical place in history for a Supreme Court pronouncement: That of being studiously avoided. In the past quarter-century, for example, it has been cited by the Supreme Court a grand total of three times: once for the proposition that the states may regulate highway usage; once (in a footnote) with the observation that the case 'in no wise bear[s] on the issue now before us'; and once in a per curiam memorandum of dismissal for want of a federal question, the reason for citing Silver being obscure." Lascher, Hard Laws Make Bad Cases, 9 Santa Clara Lawyer 1, 5 (1968).

Some distinguished jurists have repudiated the rationale relied upon in Silver and have condemned the guest statute as making no "socio economic sense in modern America." See Heath v. Zellmer, 151 N.W. 2d 664, 675 (Wis. 1967); Clark v. Clark, 222 A.2d 205 (N.H. 1966).

The present statute deprives a vast segment of the public of valuable rights to recover for dignitary losses. Does it substitute another, adequate remedy in their place? Two commentators have pointed out that:

"Nothing in Section 5 of the act governing pain and suffering suits, relates to the question of whether or not the plaintiff is entitled to no-fault benefits." Kenney and McCarthy, No-Fault in Massachusetts, 55 Mass. L.Q. 23, 40 (1971).

Thus, many injured persons are now barred from asserting a tort remedy even though they are denied any "no-fault" payment. If the plaintiff is eligible for a workmen's compensation payment, he cannot obtain any "no-fault" benefits, but he may still be precluded from any tort remedy. Hence, large classes of persons (such as employees) may find that their fundamental rights have been confiscated without the substitution of any other remedy.

Have those who may recover the no-fault benefits been given another, adequate remedy for the tort remedy for dignitary human losses? It has been estimated that 87.2 per cent of the civilian population is covered by private health insurance plans providing for hospital care and that 80.7 per cent of the civilian population

is covered by private health insurance plans providing for surgical services. See Congressional Record, March 24, 1971, S.3754.

"It is doubtful whether the circumstances which obtain today in procedures for compensating automobile accident victims offer any such compelling reason to indulge in a fiction to save the Basic Protection Plan. Most Americans today do enjoy some measure of first-party protection against automobile injuries regardless of fault. Well over eighty per cent of our population are covered by health insurance. Families are protected by roughly eight hundred billion dollars worth of life insurance. Social security coverage is extensive, and wage continuation plans are provided by many employers. . . . We do not suggest that the consequences flowing from the mass operation of vehicles upon our highways do not give rise to significant problems. We do suggest, however, that on balance the present magnitude of these problems is not so great that courts would be prepared to engage in myth-making to avoid what seems to be a clear restriction on legislative power." Ruben and Williams, The Constitutionality of Basic Protection, 1 Conn. L. Rev. 44, 54 (1968).

Since most citizens have previously voluntarily acquired these first-party no-fault benefits by other means and from other sources it can hardly be contended that the no-fault benefits are an adequate substitute for the tort remedy which has been abrogated.

It should also be noted that for most citizens, as for the petitioner in this case, the first party no-fault benefits payable under the statute are reduced by the benefits the claimant has been able to procure by his own efforts and from other sources. Thus, the first-party no-fault benefits operate in a parasitic manner by preying upon collateral benefits presently secured to accident victims. In essence, many persons will be deprived of their right to compensation for human losses in exchange for benefits which they themselves have procured by other means and from other sources. This can hardly be an adequate substitute. It is not a substitute but a cruel fiction. Furthermore, to the extent that such benefits are payable,

it will result in the tortfeasor being further immunized from liability for the special damages covered by these benefits. Thus, unconstitutional error is compounded by unconstitutional error. We have a form of "circular constitutionality" in which the abrogation of the tort remedy for general damages is justified by the availability of benefits which the claimant may have procured by his own means and from other sources, and which in turn triggers the abrogation of the tort remedy for special damages.

In addition, the statute does not provide an adequate guarantee that the first party no-fault benefits will be paid as loss accrues. Rather, it merely relegates the injured victim to an action in contract for the benefits which are supposed to be an adequate substitute for the cause of action of which he has been deprived. Unlike the original Keeton-O'Connell plan, no penalties are imposed upon the insurer for late payment of benefits. It is naive to assume that the carrier's conduct will be marked by a spirit of beneficence for injured victims.

In sum, many relatively innocent injured victims will be deprived of their tort remedies for general and special damages and will be required to purchase insurance (which they probably don't need) for their benefit, and the benefit of their passenger, and pedestrians. In addition, these innocent victims may be obliged to sue in order to collect their insurance benefits.

"The suggestion that a purchased private alternative, even when statutorily compelled, is insufficient to meet state constitutional standards of adequacy of remedy is not entirely lacking in force." Ruben and Williams, The Constitutionality of Basic Protection, 1 Conn. L. Rev. 44, 47 (1968).

In this regard, the famed Columbia Plan, which is the forerunner of this type of statute, was cognizant of, and conceded, the point being made here. Under the Columbia Plan, if two vehicles (each driven by its owner), struck one another, each owner's insurer would compensate both the owner of the other vehicle and the

passengers of the vehicle for which it was the insurance carrier. In addition, compensation for injuries to owners and operators of motor vehicles would be excluded unless the injuries were suffered in an accident caused by another motor vehicle. This was done to avoid the constitutional objection to forcing a man to insure against his own injuries. See Columbia University Council for Research in the Social Sciences, Report by the Committee to Study Compensation for Automobile Accidents 139, 140 (1932). If you cannot force a man to insure against his own injuries, a fortiori, you cannot, in addition, deprive him of his right to recover special and general damages.

The first-party no-fault benefits will be no substitute for general and special damages for members of a policyholder's household when the policyholder elects one of the deductibles authorized by the statute. Under Section 4 of the statute, the policyholder may elect a deductible in an amount as large as \$2,000.00. This election is binding upon even adult members of the household, who may not know of the election and who may not have consented thereto. If such an election is made and the adult member of the household is injured, he will not recover personal protection benefits but the tortfeasor who injured him will still remain exempt from tort liability for general and special damages. There is a total failure to provide a substitute remedy and the statute accordingly fails to satisfy due process standards.

The constitutional inadequacy of the alleged "substitute" of first-party no-fault benefits is further highlighted by certain procedures incident to the assertion of claims. Under Section 4 of the statute, in certain cases, the commencement of a tort action results in a suspension of first-party no-fault benefits. In addition, the same section turns upside down some of our fundamental concepts relating to the right to counsel, attorney-client relationships and

privileges, and fair trial. The section provides:

"Noncooperation of an injured person shall be a defense to the insurer in any suit for benefits. . . and failure of an insurer to pay benefits in the event of such noncooperation shall not in any way affect the exemption from tort liability granted herein."

Assume that P, a pedestrian, is injured by a car, owned and driven by X.

P and X are total strangers. P has an action in tort against X. The statute forces P to "cooperate" with his tort adversary's insurer in exchange for the receipt of first-party no-fault benefits (which will probably be reduced or eliminated by benefits which P has himself procured by other means or from other sources). This "exchange" will also result in a loss of a substantial portion of P's remedies for general and special damages. Yet, to be eligible for this "exchange," P must "cooperate" with his adversary. This highhanded and star-chamber procedure, standing by itself, smacks of unconstitutionality.

Thus, the statute unconstitutionally abrogates and seriously interferes with the fundamental right to personal security and bodily integrity.

D. THE STATUTE IS UNCONSTITUTIONAL SINCE ALL OF ITS POSSIBLE PURPOSES  
COULD HAVE BEEN ACHIEVED BY ALTERNATIVES WHICH WERE LESS  
RESTRICTIVE OF FUNDAMENTAL RIGHTS.

Although it is sometimes asserted that a law is valid if it has a "reasonable relation to a proper legislative purpose," see Nebbia v. New York, 291 U.S. 502, 537 (1934), this statute lies in a constitutional zone which requires compliance with a more exacting standard. The governing principle is that this statute violates due process if its purposes can be achieved by one or more narrower alternatives which are less restrictive of fundamental rights. This constitutional concept may be appropriately referred to as "the less-restrictive alternative principle." See Struve, The Less-Restrictive Alternative Principle and Economic Due Process, 80 Harvard Law Review 1463 (1967). This principle requires the legislature to employ "the narrowest workable means of accomplishing an end." Wormuth and Mirkin, The Doctrine of the Reasonable Alternative, 9 Utah Law Review 254, 257 (1964).

This Court has adopted the doctrine. See Struve, The Less-Restrictive Alternative Principle and Economic Due Process, 80 Harv.L. Rev. 1463, 1464 (1967), note 7, citing Opinion of the Justices, 322 Mass. 755, 79 N.E. 2d 883 (1948). This Court recently reaffirmed its adherence to the doctrine in Commonwealth v. Leis, 355 Mass. 189 (1969). In that case, the Court proceeded to shape the contours of the doctrine and indicated that it was applicable to three types of statutes. It is applicable and governs regulations affecting interstate commerce, constitutionally sheltered activity, and economic activity. Commonwealth v. Leis, 355 Mass. 189, 195 (1969). It is obvious that this statute falls within all of these areas. It is an important economic regulation affecting the operations and conduct

of the entire automobile insurance industry. In addition, the statute affects interstate commerce. This is evidenced by the applicability of personal injury protection benefits to out of state accidents. It is dramatically illustrated by Senate Bill No. 4339 (the "Uniform Motor Vehicle Insurance Act"), which was introduced in the 91st Congress, 2d Session, the Declaration of Purposes of which refers to "the great number of motor vehicles operated within the channels of interstate commerce upon the public streets, roads and highways of the States." Finally, the fundamental right to personal security and bodily integrity should receive the same constitutional protection as travel, religion, association, and speech and should be deemed to lie within the area of constitutionally protected activity. See Aptheker v. Secretary of State, 378 U.S. 500 (1964); Sherbert v. Verner, 374 U.S. 398 (1936); Shelton v. Tucker, 364 U.S. 479 (1960); Talley v. California, 362 U.S. 60 (1960).

Before one can determine whether there were less restrictive alternatives, one must ascertain the purpose or end to be achieved. The Court is handicapped by the lack of any written legislative history, but we are all familiar with the charges and claims made by proponents of this act:

(1) Some injured persons receive inadequate or no compensation; (2) There is congestion and delay in the courts; (3) There is delay in getting payments to the injured person; (4) Some victims are overcompensated, while others are undercompensated; (5) Fault determinations are costly and unreliable; (6) The cost of insurance is too high; (7) The present system is marred by "temptations to dishonesty." See for example, Keeton & O'Connell, Basic Protection for the Traffic Victim, 1-5 (1965).

At this juncture, we are not concerned about the validity of these criticisms. We shall, for purposes of argument, assume that each one of them is valid and that it might have been the evil sought to be dealt with by the statute. Furthermore, we are also assuming (for purposes of argument) that the statute bears some reasonable relationship to the evil to be treated. (In the next section, we shall demonstrate that no such relationship exists.) Rather, we are concerned with whether the ends could have been achieved by less restrictive and onerous alternatives.

We submit each one of these alleged problems could have been treated by less restrictive or onerous alternatives. We shall examine these charges seriatim.

(1) Some injured persons receive inadequate or no compensation.

The statute does not really ameliorate this problem, but rather aggravates it. It denies compensation for dignitary losses to 78.9 per cent of the relatively innocent injured victims. In addition, the overwhelming majority are unlikely to receive first-party benefits and special damages because they have procured benefits from other sources and from other means. The legislature should have considered and adopted alternatives which did not abrogate fundamental rights. Thus, it should have considered and adopted alternative measures such as the abrogation of immunities, higher wrongful death limits, higher insurance limits, more extensive uninsured motorist coverage, and modes of regulating and preventing insurance company insolvencies. In addition, statutory temporary disability insurance (programs generally designed to provide wage loss payments for those disabled as a result of injury not arising out of the employment) would serve to alleviate the problem of those who receive no compensation. See New

York Workmen's Compensation Law, Article 9; New Jersey Statutes Annotated, Title 43, Subtitle 9; West's Annotated California Codes, Unemployment Insurance, §2601.

(2) There is congestion and delay in the courts.

The problem of congestion could have been more reasonably alleviated by an infinite variety of more effective methods (without listing all of them) such as increasing the number of judges as the population increases, unified and centralized court management, the updating of facilities and administrative procedures (including the maintenance of adequate judicial statistics and the use of court administrators), arbitration, broadened discovery procedures, offers of judgment, juries of less than 12, and non-unanimous jury verdicts. With respect to the successful use of arbitration, see Ryan, Arbitration Cuts Philadelphia Backlog, 10 For the Defense 42 (June 1969). It is interesting to note that a recently completed poll of New York Trial Judges showed that 99 out of 100 opposed no-fault legislation, while 80 out of 100 favored arbitration of small claims. The New York Law Journal, April 26, 1971, p. 1.

(3) There is delay in getting payments to the injured person.

The statute makes no real effort to eliminate delay. No penalties are imposed upon the insurer for tardiness. Indeed, the statute has provisions which excuse the insurer from making any payments while a tort action is pending. Aside from the fact that the statute will not effectively curb delays in payments (It will cut them off completely!), there were more effective alternatives which should have been considered and adopted.

For example, many insurers now engage in advance payment programs (payment in advance of a determination of legal liability) to get needed moneys to claimants

without delay. See Graham, Advance Payment in Personal Injury Claims, 3 Forum 208 (1968). It is now estimated that in other states hundreds of thousands of claimants annually are being offered the benefits of this new technique, with one company reporting that it was paying over \$1,300,000.00 a month in advance payments. See Lemmon, Ingredients for Reform, 6 Trial 56, 58 (Oct/Nov 1970). Although it is a relatively new procedure, the study of the Department of Transportation reveals that 19% of those eligible received some form of advanced payment. See Automobile Personal Injury Claims, Vol. 1, p. 120 (Department of Transportation 1970). Although Massachusetts has a statute dealing with advance payments, see Mass. General Laws, C. 231, Section 140B, 140C, its use has not been extensive since it does not contain safeguards for the protection of the victim. A proposal, such as House No. 2359 (1970), if enacted, would cure this problem and result in a wider use of the procedure in this state. This is the course of action which should have been followed rather than this statute which abrogates fundamental rights. Victims would have received more (there would have been no reduction for collateral benefits and no threshold of \$500.00 in medical expenses to overcome) and at a faster rate.

(4) Some victims are overcompensated, while others are undercompensated.

Proponents claim some victims are overcompensated because insurance companies, in an effort to avoid the burdens of litigation, tend to make generous settlements of "small claims." [This criticism erroneously assumes that the "small claim" is less deserving of constitutional protection.]

Yet, without sacrificing any fundamental rights, the problem could have been more reasonably alleviated by the adoption of a compulsory arbitration procedure for "small" claims. Furthermore, as will be demonstrated subsequently, if any

problems exist here, they are attributable to property damage claims rather than bodily injury claims.

As far as the undercompensated victim is concerned, the abrogation of the right to recover for human losses obviously does not aid him. The legislature should have considered and adopted statutes calling for increased limits of liability, the removal of immunities and limits on wrongful death recoveries, and the retention of collateral source benefits along with the tort settlement. And if procedures were adopted which were aimed at relieving delay in the courts, the undercompensated claimant would not be under any alleged pressure, by reason of the prospect of a long delay pending trial, to accept an inadequate settlement. See Report of the American Bar Association, Special Committee on Automobile Accident Reparations, 103-105 (1969).

(5) Fault determinations are costly and unreliable.

If problems exist with respect to the processes of proof, these could be more effectively and reasonably resolved by improving evidentiary rules and techniques. Thus, the effort of the legislature should have been channelled along the lines of the Judicial Conference of the United States which is now considering new Proposed Uniform Rules of Evidence.

It should be noted that it is somewhat of a misnomer to describe this statute as a no-fault law. Under Section 4 of the statute, an insurer who pays personal protection benefits is subrogated to the rights of the party to whom it has paid benefits and it is to be reimbursed for such benefits by the tortfeasor on the basis of fault. Fault is to be determined by the insurers (by agreement or arbitration). Thus, although the courts allegedly are incapable of allocating losses on the basis of fault, insurers have the capacity to do so!

If the legislature wished to dispose of fault, it could have done so by establishing absolute liability, while retaining the right to recover full damages. That system is applied in most of continental Europe. See Department of Transportation, *Comparative Studies in Automobile Accident Compensation* (1970).

(6) The cost of insurance is too high.

The level of the present cost of insurance is due in large part to property damage. Reliable estimates are that 55% - 70% of the automobile insurance premium dollar goes to pay for property damage coverages. See Ghiardi & Kirchner, Automobile Insurance: The Rockefeller-Stewart Plan, 37 Ins. Counsel J. 324, 326 (1970). In addition, more than ten times as many people incur damage to their cars as incur personal injuries. See Lemmon, Ingredients for Reform, 6 Trial 56, 58 (Oct/Nov 1970).

Rather than abrogating the right to recover for many human losses, the legislature should have considered and adopted means of controlling the property damage problem, such as making property damage coverages compulsory. The statute requires mandatory offering of such coverages, but it does not compel the purchase of such coverages. This was the more reasonable and effective alternative for reducing the cost of personal injury insurance.

Furthermore, the legislature should have considered and adopted the alternative of eliminating subrogation of property claims.

"Subrogation ends up with the companies passing the same money back and forth, after jamming the courts all the more and running up litigation costs." Pitkin, The Dilemmas of Auto Insurance, *The Legion Magazine*, p. 8, 48 (April 1969).

It is axiomatic that "fewer accidents would mean less damage, fewer claims and fewer litigated cases," Note, 46 Notre Dame Lawyer 542, 557 (Spring 1971). The really reliable method of reducing premiums is the enactment of a stringent safety program. Vehicles could be made safer and more durable. In fact, other states have enacted so-called Bumper-Protection laws which compel the manufacture of durable vehicles. The drunk driver could be removed from the road. See Pa. Action Comm. For Highway Safety, Some Proposals for Saving Life and Property and Reducing the Cost of Automobile Insurance, 1970 Ins. L.J. 692. In addition, the use of safety equipment could have been required by the legislature. These are just some of the reasonable, effective alternatives which would have reduced the cost of insurance.

(7) The present system is marred by "temptations to dishonesty."

We will indicate in the next section that the remedy adopted by the legislature is a greater inducement to fraud. If the legislature wished to curb fraudulent claims, it should have strengthened the Fraudulent Claims Bureau and increased the penalties for the assertions of fraudulent claims.

As the Supreme Court of the United States has recently declared with respect to welfare frauds:

"Similarly, there is no need for a State to use the one-year waiting period as a safeguard against fraudulent receipt of benefits; for less drastic means are available, and are employed, to minimize that hazard." Shapiro v. Thompson, 394 U.S. 618, 637 (1969) (emphasis added).

It is submitted that the legislature should have pursued the above mentioned reasonable and effective alternatives rather than arbitrarily abrogating fundamental rights. As one article recently concluded:

"The idea of compelling someone to give up his right to a jury trial and to certain common law remedies is not acceptable. It is possible to bring about many needed reforms in automobile insurance without denying basic rights. . . . No rush should be made toward unproven plans which deny basic rights." Friedman, No-Fault Insurance -- A Premature Destruction of the Tort Liability Reparations System in Automobile Accident Cases, 46 Notre Dame Lawyer, 542, 561-563 (Spring 1971).

E. ASSUMING ARGUENDO, THAT THE LEGISLATURE DID NOT HAVE TO ADOPT A LESS RESTRICTIVE ALTERNATIVE, THE STATUTE IS STILL UNCONSTITUTIONAL SINCE IT BEARS NO REASONABLE RELATIONSHIP TO A PROPER LEGISLATIVE PURPOSE.

This statute is unconstitutional even under the standard that the legislation need only have a "reasonable relation to a proper legislative purpose." This can be demonstrated by an evaluation of the relationship of the statute to its possible purposes. In this regard, we shall once again treat the seven alleged evils highlighted in the previous discussion as the shortcomings sought to be eliminated by the statute and shall treat them *seriatim*.

(1) Some injured persons receive inadequate or no compensation.

The elimination of the right of the overwhelming majority of the populace to recover for human losses and special damages will not ameliorate this problem. Instead, it will obviously and patently aggravate it. It is not a proper replication to suggest that no-fault benefits are afforded by the statute. Their availability certainly does not remove the constitutional infirmity of abrogating a fundamental right with respect to those who cannot recover no-fault benefits (because they are ineligible) and with respect to the overwhelming majority of the populace whose no-fault benefits will be reduced by benefits from collateral sources. Thus, there is no reasonable relationship between the statute and the alleged evil sought to be eliminated.

Experience in the first three months since the act became effective, by comparison with the same period of 1970, indicates that only one-half as many victims received any payment, the average payment was reduced 36%, and total payments were down 39%. See New York Times, April 24, 1971.

(2) There is congestion and delay in the courts.

The lack of a rational relationship between the statute and the purpose of alleviating court congestion is substantiated by the information contained in a letter from the Chief Justice (in his previous capacity as Chief Justice of the Superior Court) to the Governor of the Commonwealth. See 6 Trial 49 (Oct/Nov 1970). Because it so thoroughly and cogently documents the point, we set it out in full in Appendix B.

(3) There is delay in getting payments to the injured person.

This statute does not curb delay in making payments to victims. It is designed to and does eliminate payments for dignitary losses and special damages for an overwhelming majority of the populace.

Furthermore, the first-party no-fault benefits (to the extent that one receives them) cannot, of necessity, be paid without delay. There is the built-in delay of the injured person waiting for the insurer to determine if collateral benefits are available. In addition, there is no penalty in the statute to compel the insurer to make such payments promptly. Our experience reveals that when the chips are down it is quite possible that the "friendly" carrier might show its insured its back--in the Ambrose Bierce sense of the term, "That part of your friend which it is your privilege to contemplate in your adversity." If the carrier fails to pay, the victim is relegated to a contract action. Any relationship between the statute and the above purpose is a myth.

(4) Some victims are overcompensated, while others are undercompensated.

As indicated above, the statute is designed to and does eliminate payments for dignitary losses and special damages for an overwhelming majority of the

populace. Hence, it does not reasonably relate to the purpose of alleviating the plight of the undercompensated.

Furthermore, there is no rational relationship between incurring \$500.00 medical expenses and the fair allocation of losses. It is the height of arbitrary and capricious conjecture to assume a valid relationship between medical expenses and dignitary losses. It is a demonstrable fallacy to suppose that there is a fixed relationship between the cost of medical expenses and attendant pain and suffering.

In cooperation with the Department of Transportation Automobile Insurance and Compensation Study, the Closed Claims Sub-committee of the Insurance Advisory Committee (including the 10 largest automobile volume company groups in the country) conducted a survey. The Survey concluded that there is no automatic correlation between "the amount of economic loss and the consequent indirect or psychic loss." It found that:

"The particular injury involved, the occupation of the injured, the economic stratum in which he exists, may all have a bearing by varying degree on the indirect damage segment of the loss. Thresholds of pain and tolerance thereto differ in individuals just as does the psychic impact and residual of injury. These relationships must be valued in each particular case and the absence or presence of indirect elements of damage are matters of widely varying degree." Automobile Personal Injury Claims, Vol. 1, p. 113 (Dept. of Transportation 1970) (emphasis added).

The Chart of Actual Cases in Appendix A indicates that judges and juries (who best reflect the community's notions of justice) believe that there is no rational correlation between medical expenses and human losses.

It is not constitutionally permissible to sanction this statute by invoking the shibboleths that it merely abrogates "small claims" or "nuisance" claims. As this Court has so aptly concluded:

"No discussion is required to show that it is beyond the power of the Legislature, under constitutions which guard the individual against being deprived of property without due process of law, to declare without any process at all that a well recognized kind of property shall no longer be property. 'Lawful property cannot be confiscated' under the guise of a statute. Durquin v. Minot, 203 Mass. 26, 28 (1909). When legislative attempts to compel the deprivation of certain comparatively small sums of money without due process of law invariably fail, see for example, Northern Pacific Railway v. North Dakota, 236 U.S. 585; Great Northern Railway v. Minnesota, 238 U.S. 340; Chicago, Milwaukee & St. Paul Railroad v. Wisconsin, 238 U.S. 491, Louisville & Nashville Railroad v. Central Stock Yards Co., 212 U.S. 132, it is manifest that something recognized as property by the law of the land cannot be extinguished utterly." Bogni v. Perotti, 224 Mass. 152, 155-156 (1916) (emphasis added).

(5) Fault determinations are costly and unreliable.

This legislation is really not a "no-fault" statute. Rather, it is a reduced or no-payments statute. To the extent that common law remedies are preserved, they are governed by the fault principle. To the extent that so-called first-party no-fault benefits are paid to an injured victim, the insurance carrier making such payments is subrogated to the rights of the victim and it may sue the tortfeasor and will be reimbursed by the tortfeasor only if fault can be shown. This process of subrogation, based upon the fault principle, is to be effectuated between insurers (by agreement or arbitration). Hence, the statute really does not purport to come to grips with any alleged defects in the fault principle. To the contrary, it rather smugly assumes that insurance carriers can be relied upon to allocate losses adequately upon the basis of the fault principle. Hence, it is constitutionally difficult to rationalize the abrogation of a fundamental right upon the basis of a discontent with the fault principle.

The retention of fault is based upon the verities of experience. A recent study conducted by an insurance company demonstrated that in over 90% of all automobile accidents fault could be easily assessed--usually from only the facts contained in the initial report of the accident. Marryott, Testing the Criticisms of the Fault Concept, 35 Ins. Counsel J. 112 (1968). Thus, empirical data reveals that the abrogation of the fault principle (if such had occurred) would not have been justified.

In addition, under the statute there will, of necessity, be a multiplication of the mechanisms for processing claims. An injured victim will have a claim against a third party tortfeasor and his own insurance company. Both insurance companies will have to investigate, administer and process claims. Thus, it is irrational to suggest that this statute will reduce costs. Rather, it will, of necessity, increase them.

(6) The cost of insurance is too high.

This statute is inherently and patently incapable of reducing the costs of insurance. To the contrary, it is designed to and does increase the costs of insurance in an arbitrary and capricious manner. This is dramatically illustrated by the facts of this case.

It was stipulated in the Statement of Agreed Facts that, prior to the enactment of the statute, Pinnick's compensation recoverable for the injuries was \$1,565.00. It was further agreed that such benefits would have been obtained (using his 1970 premium as the basis for computation) as a result of Pinnick having paid a premium of \$49.00.

On the other hand, under any conceivable interpretation of the facts of the case and of the statute, Pinnick will not receive more than \$300.28 in personal injury protection benefits. Despite his severe low back sprain with radiation of pain into the lower right extremity, he recovers nothing for this human loss since he did not incur medical expenses in excess of \$500.00. Because he did not actually lose any wages at his post office job, he is not compensated for this aspect of his impaired earning capacity. At his second job, at which he was paid \$96.25 per week, he lost 12 days of wages. Since the statute limits wage loss recovery to 75% of the wages lost, his maximum recovery for this item of damages is \$185.28 (even if we assume only a 5-day work week; it would be less if he worked 6 days a week). His recovery would be limited to the sum of his lost wages (\$185.28) and medical expenses (maximum amount of \$115.00). Thus, as a result of having paid a premium of \$41.70, Pinnick receives benefits of \$300.28.

In order to understand the true costs of Pinnick's insurance, these figures must be quantified in terms of benefit-cost relationships. Under the common law system, Pinnick paid \$49.00 and received \$1,565.00 in benefits. Thus, the common law benefit-cost ratio is  $\$1,565.00 / \$49.00$  or 31.9. This is to be sharply contrasted with Pinnick's benefit-cost ratio under the statute. Under the statute, Pinnick pays \$41.70 and receives only \$300.28 in benefits. Thus, the benefit-cost relationship under the statute is  $\$300.28 / \$41.70$  or 7.4. Thus, by paying 2¢ less (in a nominal and illusory sense) per day, we drop from \$31.9 of benefits per dollar of cost (under the common law) to \$7.4 of benefits per dollar of cost.

In other words, after the statutory change, true insurance costs have risen in an arbitrary and capricious manner. As a result of this statutory change, a dollar of benefit expectations costs us 3.3 times more than it did before the change. Thus, an expert on insurance has aptly noted with respect to the change:

"Our real costs have risen greatly despite a nominal reduction in price." Brainard, Prices and Politics, 6 Trial 24, 45 (Oct/Nov 1970).

Pinnick is not atypical. His plight is representative of the overwhelming majority of our citizens. The statute arbitrarily and capriciously penalizes the deserving, responsible citizens who have by their thrift, efforts, and industry secured collateral benefits. Indeed, it penalizes all relatively innocent injured victims. The only ones who might conceivably benefit are the reckless and irresponsible. Thus, the over-all real costs of insurance have been increased in an arbitrary and capricious manner.

Furthermore, even when viewed from the narrow focus of "price" of premiums, as distinguished from the realities of true costs, the statutory scheme has proven itself incapable of reducing the "price" of premiums. According to statistics compiled by the Commissioner of Insurance, the over-all premiums for automobile insurance coverages paid by the average driver in Massachusetts increased during the current year.

This Court previously held that the rate reduction provisions (Section 6) of the statute are unconstitutional. See Aetna Cas. & Sur. Co. v. Comm'r of Ins., 1970 Mass. Adv. Sh. 1411. Section 3 of Chapter 744, as enacted on August 23, 1970, provided for a complete reinstatement of the common law system "if any of the provisions of chapter 670 of the acts of 1970 providing for

the exemption of persons from tort liability or a restriction on the right to recover damages for pain and suffering are held to be unconstitutional." Despite the presence of a severability clause in the statute, this section mandates a decree reinstating the common law system in toto if any of the key and integral parts of the statute are held unconstitutional. The rate reduction section is inextricably tied (both in its words and in the expectations of the public and the legislature) to the provisions pertaining to the exemption from tort liability. Section 6 specifically provides that it was inserted ". . . for the purposes of putting into effect the provisions of the General Laws providing for personal injury protection." (Emphasis to statutory language added). The exemption from tort liability is an integral part of the provisions pertaining to personal injury protection. It is the alleged quid pro quo for personal injury protection benefits. Furthermore, there is no exemption from tort liability unless both the tortfeasor and the victim are covered by personal injury protection benefits. Personal injury protection benefits and the exemption from tort liability are legislative Siamese twins. Hence, we submit that since provisions pertaining to the exemption have been held unconstitutional, the common law system of providing redress must be restored in toto.

(7) The present system is marred by "temptations to dishonesty."

If fraud exists at common law, it is a fortiori inherent (to an even larger degree) in this statute. Under the statute, first-party no-fault benefits are payable for injuries received while alighting from and entering the vehicle. It is not necessary to show that the car was in motion. How many slip and falls will

become automobile claims? Furthermore, unlike the prior compulsory coverage, the accident need not occur on the ways of the Commonwealth or places to which the public has a right of access. See Kenney and McCarthy, No-Fault in Massachusetts, 55 Mass. L.Q. 23, 25 (1971). How many accidents will be staged in the secrecy and privacy of one's home?

The necessity of crossing the \$500.00 medical expenses threshold to recover for pain and suffering is an inducement to fraud in the ballooning of medical bills. In addition, there is a built-in statutory temptation to conceal collateral benefits.

We submit that there is no rational nexus between this statute and the elimination of fraud.

The concept of due process is measured by the "community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct." Breithaupt v. Abram, 352 U.S. 432, 436 (1957). In 1968, the State Farm Insurance Company submitted a questionnaire to its more than 11 million policyholders to test public preference as between fault and non-fault insurance. Of the 3,090,315 tabulated responses, 94% favored the retention of the fault system. The New York Times, Dec. 15, 1969, p. 41. This finding has been substantiated by other studies as well. See Spangenberg, The Public Attitude, 6 Trial 34 (Oct/Nov 1970). There is an old saying, "Walk from the people and you walk into the night." This statute arbitrarily and capriciously abrogates fundamental rights cherished by the community. It has no reasonable relation to a community valued purpose.

F. THE STATUTE CANNOT BE SUSTAINED BY DRAWING AN ANALOGY TO  
WORKMEN'S COMPENSATION.

Some supporters of this legislation have attempted to find constitutional comfort in cases upholding state workmen's compensation laws. There are a number of solid reasons why the statute cannot be sustained by drawing such an analogy. First, as other briefs filed in this case have cogently pointed out, the abrogation of common law remedies is elective under workmen's compensation. The employee has the choice, when he enters the employment relationship, of retaining his common law rights. Under this statute, the injured victim is afforded no such election or choice. The decisions that workmen's compensation laws were not denials of due process rested on the idea that both employers and employees received advantages under the new system which could be balanced against the common law rights which they lost. See New York Central R. Co. v. White, 243 U.S. 188, 201 (1917). The legislature cannot abolish a cause of action for redress of injuries without substituting another, adequate remedy in its place. We have demonstrated in Part C above that the legislature did not provide an adequate substitute for the fundamental rights it had abrogated.

Two outstanding tort and constitutional Law scholars, Professors Kalven and Blum of the University of Chicago Law School, have succinctly explained the absence of any meaningful analogy. Rather than paraphrasing their discussion, we report their dispositive analysis:

"We will not do more than note that there has been a curious instance of cultural lag in the conventional arguments from workmen's compensation. Workmen's compensation is being looked to as the model of a brilliant social reform at a time when, for those familiar with the field, the bloom is off the rose and there is sharp criticism of the meagerness and rigidity

of award schedules, and of the costs, delays, irregularities and suspected corruption in the operation of the system."

"Nor will we do more than mention several differences, which some observers have urged as critical, between the industrial accident situation and the auto accident situation. It is said that while the industrial accident is relatively fixed and easy to investigate, the auto accident is more transient and difficult to investigate. The result is that there are likely to be great differences in the opportunities for policing fraudulent claims in the two areas. It is also said that damages are more amenable to scheduling in the one case than in the other, both because the range and variety of physical injuries is more restricted in the industrial accident, and because the injured personnel are drawn from a fairly homogeneous economic group. These are acute observations, and they do point up specific difficulties which would be encountered in administering a compensation plan, but they do not cut deep enough to put to rest Jeremiah Smith's challenge of fundamental inconsistency."

"There are three residual differences which lead us to deny the analogy to workmen's compensation. First, there is a great difference between the common law system for industrial accidents which workmen's compensation was created to replace and the common law system for auto accidents which exists today. Under the law of fifty years ago, we are told, the ability of the injured employee to recover was greatly circumscribed by the well-known trilogy of employer defenses--assumption of risk, contributory negligence, and the fellow servant rule. The old law has looked to some like a conspiracy to throw the losses of industrial accidents onto employees as a class at a time when they were conspicuously less well off than their employers. There is no comparable harshness in the law which confronts the auto accident claimant today. In the same vein, the whole 'welfare' support for workmen's compensation is considerably diluted today in the auto accident area. First party insurance and social legislation have come on the scene and have greatly reduced the likelihood that the auto accident victim and his family will bear the full brunt of the accident."

"A second difference is that the enterprise situation made possible a popular myth as to how the cost of workmen's compensation was to be borne. The widespread image was that by placing the cost of workmen's compensation on employers the cost would be passed on to consumers of their products through operation of market forces. The result was thought to be that not only social justice but economic justice would be accomplished; and this view of the matter was crystallized in the slogan that the cost of products should reflect the blood of workmen. Although there are good reasons today for doubting whether consumers do bear the cost of workmen's compensation, for our immediate purposes it is enough that there is no one

in the auto situation who occupies a role which the employer was popularly thought to play in the industrial accident situation--no one, that is, who could be regarded as being in a position to pass on the costs to consumers via the market. "

"A third difference challenges the view that workmen's compensation offers a competing doctrine of tort liability. There is no doubt that this is the traditional view; workmen's compensation was enacted to repeal and replace common law tort rules, and it was challenged and ratified in court on that premise. We wish to suggest here a considerably different view of the history and rationale. In retrospect, we are impressed that workmen's compensation can best be understood as a kind of 'fringe benefit' incorporated by law into the basic employment contract. The law in effect compelled the employer to provide, as a term of employment, an industrial accident policy for his employees."

"Several strands of thought support this perspective. In his highly regarded casebook on Agency, Roscoe Steffen groups materials so as to place workmen's compensation as part of the employment relationship. He suggests that the legal history of personal injuries to employees could easily have been different--that courts could readily have handled the whole problem as an aspect of the employee's indemnity action against the employer for losses incurred in the course of an agency relationship. There is a contemporary analogue in the tendency today to use workmen's compensation as a base, and through collective bargaining to expand the benefits to cover unemployment, sickness and accidents off work. What we wish to emphasize is that this continuum from statutory benefits to collective bargaining agreements can be read backwards, so as to view the whole as part of the employer-employee contract. The distinctive quality is that each of these forms of coverage is tied in to the employment nexus. On this view the issue to which workmen's compensation is addressed is primarily that of determining the terms and conditions of employment."

"In stressing this somewhat novel rationale for workmen's compensation, our chief purpose has been to point up a significant difference between the industrial accident and the auto accident. Unlike workmen's compensation, there is no contractual nexus on which auto compensation plans can build. "

"Thus we conclude that the reason society has for so long tolerated different legal principles for industrial accidents and for the tort field generally is that, Jeremiah Smith to the contrary, the two areas are essentially different." Blum and Kalven, Public Law Perspectives on a Private Law Problem, 25-27 (1965).

The third distinction noted by Professors Blum and Kalven has been explicitly endorsed and followed by the United States Supreme Court. In Truax v. Corrigan, 257 U.S. 312, 329 (1921), the Supreme Court stated:

"These cases (speaking of the workmen's compensation cases), all of them, relate to the liabilities of employers to employees growing out of the relation of employment for injuries received in the course of employment. They concern legislation as to the incidents of that relation. . . . The broad distinction between one's right to protection against a direct injury to one's fundamental property right by another who has no special relation to him, and one's liability to another with whom he establishes a voluntary relationship. . . is manifest upon its statement."

II. THE STATUTE VIOLATES THE EQUAL PROTECTION GUARANTY OF THE  
MASSACHUSETTS AND FEDERAL CONSTITUTIONS.

Articles VI and VII of the Massachusetts Constitution provide, in part,  
as follows:

"Article VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public. . . ."

"Article VII. Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor or private interest of any one man, family, or class of men. . . ."

Article XIV, Section 1 of the United States Constitution provides in part:

". . . nor shall any state. . . deny to any person within its jurisdiction the equal protection of the laws."

In substance, both of these Constitutional restrictions proscribe legislation which classifies citizens of Massachusetts by characteristics that are arbitrary or capricious, by characteristics that have no reasonable rational relationship to the legislative goal, and by characteristics that are manifestly beyond the control of the regulated persons.

Within the last decade, the "equal protection" guaranty has been given two additional dimensions. First, greater judicial supervision is exercised and less legislative latitude is permitted where the statute affects a "fundamental right." If a "fundamental right" is involved, the courts seem to demand an embracing classification which avoids any exclusion of persons whose inclusion would have been compatible with the legislative goal.

"The new concepts of equal protection hardly fit within the traditional method. The decisions appear to rest upon two largely subjective judgments, perhaps coupled with a sense of how fast a change the community desires. One element is the relative invidiousness of the particular differentiation, such as between men of different race, farmer and city dweller, rich and poor, literate and illiterate, or men and women. The second element is the relative importance of the subject with respect to which equality is sought, such as the vote, the defense of a criminal prosecution, or civil litigation." Cox, The Supreme Court 1965 Term--Forward, 80 Harv.L.Rev. 91, 95 (1966) (emphasis added).

The Supreme Court of the United States has recently stated that legislation cannot infringe upon a fundamental right "unless shown to be necessary to promote a compelling governmental interest." Shapiro v. Thompson, 394 U. S. 618, 634 (1969). If a state cannot penalize the right to travel (the right recognized in Shapiro), it certainly cannot arbitrarily abrogate the fundamental right to personal security and bodily integrity.

The high degree of constitutional protection afforded the tort remedy for personal injuries was dramatically highlighted by two recent decisions dealing with the rights of illegitimate children. In Levy v. Louisiana, 391 U.S. 68 (1968), the Court held that Louisiana could not constitutionally bar an illegitimate child from recovering for the wrongful death of its mother, while permitting such recovery by a legitimate child. Last month, the Court held in Labine v. Vincent, 39 L.W. 4344 (1971) that the same equal protection considerations did not prevent Louisiana from barring an illegitimate child from intestate succession, while affording such rights to a legitimate child. In so doing, the majority opinion distinguished the earlier Levy case on the ground that it involved a tort remedy, which the Court obviously considered more fundamental than a right of intestate succession:

"The cause of action alleged in Levy was in tort. It was undisputed that Louisiana had created a statutory tort and had provided for the survival of the deceased's cause of action, so that a large class of persons injured by the tort could recover damages in compensation for their injury. Under those circumstances the Court held that the State could not totally exclude from the class of potential plaintiffs illegitimate children who were unquestionably injured by the tort that took their mother's life. Levy did not say and cannot fairly be read to say that a State can never treat an illegitimate child differently from legitimate offspring." (id. at 4345).

The second dimension added to the "equal protection" guaranty is the concept of "inherently unreasonable classifications." Certain characteristics, which are beyond the control of the regulated individual, are necessarily arbitrary, capricious, and unreasonable--race, religion, personal status, family, sex, indigence. See Schwartz, A Commentary on the Constitution of the United States, Vol. 2, §§474-77 (1968). Classification which results in part from the wealth or poverty of the individual has been under particularly vigorous attack. E.g., Tate v. Short, 39 L.W. 4301 (1971) (outlaws imprisonment of traffic offenders who cannot pay assessed fines); City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) (forbids restriction of electorate for general obligation bonds to property owners); Boddie v. Connecticut, 39 L.W. 4294 (1971) (invalidates statute requiring payment of court fees and expenses as absolute condition for filing divorce action).

Some more cautious commentators have described classes formed by these characteristics as "suspect classifications," which require extraordinary justification for use by a legislature in discriminating between one class and another. See Note, "Developments in the Law of Equal Protection," 82 Harv. L. Rev. 1065, 1099, 1101 (1969). However, whichever terminology is utilized, there can be no doubt that certain classifications are particularly onerous and invidious.

An examination of this statute demonstrates that (a) it seeks to abrogate the fundamental right to full compensation for injuries tortiously inflicted by another (see *supra*, pp. 3-11), (b) by a classification that is unreasonable, arbitrary, and capricious, and which (c) strikes hardest at those in lower economic circumstances--an inherently unreasonable classification. Thus, it constitutes an invidious discrimination among the class of tort victims.

Further examination demonstrates that this statute also violates the equal protection guaranty for the class of motorist-defendants by granting immunity to some, while denying it to others--for reasons totally unrelated to the nature of the tortious conduct or the severity of injuries sustained by the victim.

A. THE ACT DENIES "EQUAL PROTECTION" TO TORT VICTIMS SUFFERING  
GENERAL DAMAGES.

Section 5 of Chapter 670 (Section 6D of Chapter 231 of the General Laws) provides that an automobile tort victim cannot recover general damages unless his injuries involve one of the following unrelated categories: (1) death, (2) permanent serious disfigurement, (3) deafness or blindness, (4) dismemberment, (5) any fracture, or (6) medical expenses exceeding \$500.00. Although there is no clear legislative history, it would certainly appear that the legislature was attempting to separate "more serious" injuries from "less serious" injuries, or to separate injuries causing greater "disability" from those causing little or no "disability." However, the legislature did not use such terms, synonyms for those terms, or equivalent phrases.

Instead, the legislature clumsily grasped for some individual standards that might conceivably accompany more serious or more disabling injuries. Indeed, the very multiplicity of standards attempted by the Act demonstrates its inadequacy, since it seems relatively obvious that many serious injury cases with resulting serious disability will fall through the large holes left in this clumsy sieve of classification. Many tort victims suffering relatively serious injuries with relatively serious disability will be barred from any compensation for general damages, while a significant number of tort victims with relatively trivial injuries and relatively trivial disability will be entitled to full general damages.

This court has viewed numerous cases of serious injury with resulting serious disability that did not meet any of the classification characteristics specified

in this Act. Those persons would not be allowed compensation for disability, physical and mental anguish, loss of ability to enjoy life, or any other general damages. By contrast, every insurer could cite a multitude of "small" claims, involving one or more of the characteristics specified in the Act, which would authorize an award of full general damages. See the Table of Actual Cases in Appendix A, *infra* p. 52.

Under the Act, the required threshold of \$500.00 medical expenses, subjects the victim to the unconstitutional vagaries of a doctor's whim.

Consider the victim whose doctor directs conservative, non-surgical treatment for a herniated intervertebral disc in the back, or a torn meniscus of the knee, or major psychiatric disturbance from a traumatic neurosis. These and numerous other circumstances can and do produce prolonged disability from employment and enjoyment without incurring \$500.00 medical expenses or satisfying any

of the other supposedly "objective" standards of this Act. These victims could not recover general damages. But, if the physicians supervising the care of such victims determine to hospitalize those same patients for several days, their medical expenses could exceed \$500.00 and authorize the victims' recovery of full general damages (though their injuries and disabilities were identical).

The Act's non-monetary standards for serious injury can be equally illusory. Thus, "dismemberment" by loss of a finger tip is much less drastic than a shoulder dislocation with permanent limitation of joint motion. A simple toe "fracture" is much less serious than torn ankle muscles and ligaments. Even the apparently extreme standard of resulting "death," which authorizes full damages for "pain and suffering," can be grossly inequitable. Should the estate of a man who suffers "pain and suffering" for one minute prior to his death be entitled

to full compensation for that momentary distress (in addition to payment for pecuniary loss of his survivors), while a man who endures a full year's anguish without death is barred from any general damages?

The recent studies completed by the federal Department of Transportation further emphasize the capricious nature of the classification imposed by this Act. Thus, after examining approximately 16,000 closed injury claims in which payments were made, the Department found 124 cases involving fractures and medical expenses under \$500.00 with resulting total settlement payments averaging only \$900.00 (15 of these settlements average only \$133.00). D.O.T., Automobile Personal Injury Claims, Vol. 2, pp. 164, 166 (1970). At the same time, the Department of Transportation found 85 cases of "bruises" involving medical expenses between \$151.00 and \$500.00 with resulting settlements averaging \$4,680.00. Id. at 173, 175. And the Department found 91 cases of "strains" involving medical expenses from \$151.00 - \$500.00 with total settlement averaging \$5,561.00 (in 10 of these cases the average settlement was \$16,590.00). Id., at 169, 171.

The irrational nature of the standards set by the Act is further evidenced by reference to medical literature, which consistently states that the presence or absence of a fracture and the amount of medical expense are extremely poor indicia of the extent of injury or disability.

"Again, the X-ray may reveal multiple fractures in the skull, with the patient showing practically no signs of cerebral damage, while another patient may have no skull fracture at all and yet the cerebral damage is so extensive that death early ensues. Thus, neither the force of the accident nor the presence or absence of a skull fracture can be depended upon to evaluate the extent of trauma." Mock, Skull Fractures and Brain Injuries, p. 54 (1950).

"A person may receive a severe blow to the skull and sustain neither fracture nor injury to the cranial contents; he may receive a comparatively mild blow and sustain both a fracture and injury to the brain; he may sustain a fracture and no brain damage; he may have no fracture and very severe injury to the brain; finally, he may receive no direct blow (explosions with sudden expansion of the air in his immediate neighborhood) and yet sustain grave cerebral injury." Wechsler, Textbook of Clinical Neurology, p. 509 (1955).

"Twenty degrees loss of motion of low back in extension flexion, and rotation [from low back strain] = 12% permanent impairment of whole man. . ."

"Non-operated, clinically established disc derangement (in back) WITHOUT RESIDUALS = 5% permanent impairment of whole man. . ."

"Pelvis fractures without displacement, healed, WITHOUT RESIDUALS = 0% permanent impairment of whole man. . ."

"Fractures with displacement, healed, WITHOUT RESIDUALS, coccyx = 0% permanent impairment of whole man." American Medical Association, Guide to the Evaluation of Permanent Impairment of the Extremities and Back, pp. 97, 99, 101-105 (Feb. 15, 1958).

"Physicians all know the type of person who loves to get examined, and who keeps going from clinic to clinic and physician to physician. . . . Some of these peripatetics are hypochondriacs, and others have a pathologic fear of death. Some curious persons travel about ostensibly looking for reassurance but becoming outraged whenever they get it!" Alvarez, The Neuroses, p. 240 (1951).

Facing a very similar issue, Ohio courts recently found that a comparable provision of the Ohio Workmen's Compensation law violated the equal protection guaranty. In Fleischman v. Flowers, 25 Ohio St. 2d 131, 267 N.E. 2d 318 (1971), the Ohio Supreme Court considered a statute that authorized compensation for permanent partial disability only if the worker had been absent from work for 8 days as a result of the injury. In a unanimous decision, which affirmed a unanimous decision of the intermediate appellate court, the Ohio court held this classification

constituted a denial of equal protection for the class of injured workmen covered by the Ohio Workmen's Compensation laws:

"The provision of R.C. 4123,57, . . . limiting eligibility to file an application for the determination of the percentage of permanent partial disability. . . to persons who have received compensation for temporary total disability [requires 8 days absence from work] . . . leads to arbitrary and capricious results and thus is unconstitutional as being in conflict with the "equal protection" requirements of Section 26 of Article II of the Ohio Constitution." Syllabus by the Court. Id., 25 Ohio St. 2d 131, 267 N.E. 2d 318, 319.

"The happenstance of such absence from employment at some prior time has no logical relationship to the question of the extent of claimant's present permanent partial disability, or any relationship to the original injury. It does not establish minimum limits as to the degree of disability necessary for payment. It is not akin to a statute of limitations. Any person who, by the nature of his employment, is able to return to at least some work within seven days is precluded from even having his application considered, although the extent or degree of his permanent partial disability may be far in excess of that suffered by another employee who happened to be totally absent from employment for more than one week, and even though there be no question as to the relationship of the disability to the injury." Id., 25 Ohio St. 2d 131, 137, 267 N.E. 2d 319, 322.

We submit that there is a strong parallel between a law which abrogates the right of a worker to compensation for permanent partial disability if he returns to work within 8 days and a law that abrogates the fundamental right of an auto victim to recover general damages when he incurs only \$500.00 medical expenses.

B. THE ACT DENIES EQUAL PROTECTION BY INVIDIOUS DISCRIMINATION  
AGAINST THE POOR.

The Act deprives the poor of fundamental rights in an arbitrary and discretionary manner. When we remember that one of the principal standards for eligibility to recover full compensation is the expenditure of more than \$500.00 for medical care, the economic discrimination becomes manifest. Persons in a lower economic stratum typically incur substantially less medical expenses than the wealthy for the same physical malady, for the following reasons: (1) they have less funds to expend for such care; (2) physicians tending to their ailments restrict care for the financially oppressed; (3) the poor usually lack the education and experience to demand better or more extensive care, and (4) health care facilities in their immediate neighborhoods tend to charge less and provide less care. These familiar facts have been rather firmly established by independent studies which emphasize this unpleasant aspect of our society. See, e.g., Carlova, "Could you make it in New York City?" Medical Economics 110, 117 (Feb. 16, 1970):

"In sharp contrast to the city's high-fee plateaus are the numerous low-fee pockets in poorer districts. Consider Bathgate Avenue in the Bronx, which runs through a district that the Department of Health classifies as Health Area 24. . . . What sort of medical fees are charged in Health Area 24? A lot of the poor there depend on welfare care, of course, but those who go to private doctors get some astonishing bargains. A spot check of physicians who practice in the vicinity turned up such responses as these: 'I charge \$5.00 for an office visit, but I don't always get it.' . . . 'I'll go as low as \$3.00.' . . . 'I don't really have a fee schedule. I take what I can get, even if it's only a couple of dollars, provided it's paid in cash.' "

Nor is it any answer to say that the Act provides \$2,000.00 toward out-of-pocket expenses. Persons in lower economic circumstances will be more apt to elect available deductibles (and are being publicly urged to do so), since they are anxious to minimize premium charges at any cost. Further, they may well exhaust the economic loss protection provided by the Act in obtaining reimbursement for lost wages and thereby minimize or eliminate any protection for payment of medical bills. And, the availability of some money for medical bills makes no change in the education and experience of the indigent victim or the habits of the health care facility he is likely to contact. Therefore, the standard of eligibility for general damages is substantially a financial standard, and invidiously discriminates against indigents and lower income groups. Consequently, it is an "inherently unreasonable classification," or at the very least a "suspect classification."

The categories of eligibility for general damages would be arbitrary, unreasonable, and invidiously discriminatory under any set of circumstances. But, they are a fortiori violative of the equal protection guaranty when they abrogate fundamental rights and discriminate against lower economic status persons.

C. THE ACT DENIES EQUAL PROTECTION FOR A SUBSTANTIAL NUMBER OF  
PERSONS SUFFERING HUMAN LOSSES.

The obnoxious elements of this classification are even clearer when we  
consider certain anticipated examples:

(a) Victims A and B are passengers in an automobile that is struck by a tortfeasor. Both sustain severe strains of neck and back muscles which require their absence from work for a period of two months. A's doctor elects early hospital attention with traction and observation, at a cost of \$750.00. B's doctor directs two weeks complete bed rest and medication with 20 office visits at a total cost of medical care of \$350.00. Both doctors conclude that their patients are left with a 15% permanent partial disability. A is entitled to general damages--B is entitled to none. Arbitrary? Capricious? Unreasonable? Invidious discrimination?

(b) C is a passenger in the same vehicle and sustains a simple fracture of the small finger of his left hand. His finger is splinted in the hospital emergency room, and he has two followup office visits at a total medical cost of \$50.00. He loses no time from work and recovers from his injury completely in one month, without any residual disability. C is entitled to compensation for general damages. Arbitrary? Capricious? Unreasonable? Invidious discrimination?

(c) D and E are passengers in another vehicle struck by a tortfeasor. Each sustains a herniated intervertebral disc in his back. As a welfare recipient, D is accustomed to seeing an inexpensive neighborhood physician who charges \$5.00 per visit. E is a successful insurance executive and consults a neurosurgeon and an orthopedic surgeon who charge \$30.00 per visit. D and E each consult their respective physicians 20 times. D's medical bill is \$100.00; E's medical bill is \$600.00. Both D and E are totally disabled for 2 months. Both are found by an independent medical examiner to have 30% disability. E is entitled to general damages. D is not. Arbitrary? Capricious? Unreasonable? Invidious discrimination?

(d) D's wife is injured when two trains collide. She has less injury than her husband, less disability, and less medical expense. D's wife is entitled to recover general damages. Arbitrary? Capricious? Unreasonable? Invidious discrimination?

D. THE ACT DENIES EQUAL PROTECTION "FOR TORT VICTIMS SUFFERING ECONOMIC LOSS."

The preceding analysis of discriminatory classification related to the tort victim's right to recover general damages. Although the Act imposes different standards to restrict the victim's right to recover economic loss (special damages), we submit that this classification likewise violates the equal protection guaranty.

The tort victim is barred from recovering the first \$2,000.00 of economic loss from the tortfeasor. He may not recover medical expenses from his own auto insurer if he has paid premiums for other health insurance (Blue Cross, Mutual of Omaha, etc.). He cannot recover lost wages from his auto insurer if he has earned a wage continuation arrangement as a fringe benefit of his employment. He cannot recover the first \$2,000.00 of medical expense or lost wages from anyone if he is a member of a household that has elected to buy a \$2,000.00 deductible auto policy with or without his knowledge or consent. Section 2, 4 of Chapter 670 (Sections 34A, 34M of Chapter 90 of the General Laws).

Once again, the obnoxious elements of these classifications are apparent in certain anticipated examples:

- (a) A and B, who have paid the same auto insurance premiums, sustain similar injuries in an accident. A, a prudent and responsible person, had previously (by his thrift) procured a health insurance policy. B preferred to squander this health insurance premium money at the race track. B's auto insurer owes him \$2,000 expenses in full. A's auto insurer owes him nothing.

(b) Responsible and prudent A, by his willingness to forego a raise in salary, negotiated a wage continuation arrangement as a fringe benefit of his employment. Irresponsible B (not concerned about his becoming a welfare burden), opted for an immediate pay raise rather than a wage continuation plan. B's auto insurer owes him \$2,000. A's auto insurer owes him nothing.

(c) C and D are passengers in O's car and each sustain \$2,000 medical expense as an auto tort victim. O is C's brother-in-law and lives rent-free in C's house. O purchased a \$2,000 deductible policy to save premium charges. D is entitled to \$2,000. C cannot obtain reimbursement from anyone for any part of those bills.

We ask again--are these classifications arbitrary? Capricious?

Unreasonable? Invidious discrimination?

Part of these rules bear a close similarity to the federal Social Security provisions that impose an offset for workmen's compensation benefits received.

In the first detailed examination of those provisions, the court in Belcher v. Richardson, 317 F. Supp. 1294 (S.D. W.Va. 1970) held those portions of the Social Security Act invalid. Finding that the federal act denied equal protection, the court said at 317 F. Supp. 1298-99:

"The other issue raised by the plaintiff is that the offset provision of Section 224 creates arbitrary discrimination between two classes of disabled workers, essentially indistinguishable from each other except that one is composed of those disabled persons who also receive workmen's compensation benefits and the other is composed of those disabled persons who also receive benefits from private disability insurance plans or tort claim awards, and that on the basis of this difference alone the first class has benefits reduced while the second class has benefits left untouched. In other words, the plaintiff complains that it is patently arbitrary to single out for the purpose of applying the offset only those who are receiving workmen's compensation and exclude those who are receiving benefits from other sources. . . .

"The defendant, in justification of these discriminatory features of the offset provision, argues that its purpose was to avoid duplication of public benefits. If this be its true purpose, it is certainly a laudable one and one which this Court could wholeheartedly accept. However, the argument is inapplicable here for, as previously shown, workmen's compensation in West Virginia is not a gift from the public largesse, but rather is an entitlement arising from a contractual relationship between employer and employee, sanctioned by law, whereby each gave up a legal right in return for a concomitant legal benefit. That no public funds are involved is made abundantly clear by the provisions of West Virginia Code, 23-3-1. . . . No public funds being thus involved, the defendant's argument that plaintiff's workmen's compensation award should be treated as a public benefit obviously becomes quite untenable and must be rejected.

"In sum, therefore, it is held that in the circumstances of plaintiff's case, the application of Section 224 cannot be constitutionally applied, since to do so would deprive him of due process and equal protection of the law under the Fifth and Fourteenth Amendments."

If the legislature cannot constitutionally discriminate against those who receive public benefits, a fortiori, it cannot arbitrarily penalize those who have purchased private benefits.

# E. THE ACT DENIES EQUAL PROTECTION TO TORTFEASORS.

We have seen that the statute unreasonably classifies persons within the group of tort victims who sustain general damages or economic loss. We should also recognize that the statute unreasonably discriminates among tortfeasors as well.

One would expect that a tortfeasor would be held responsible according to the nature of his conduct, or at the very least according to the nature of the damage that he inflicts on others. But this is not the case. A tortfeasor is entitled to the immunity provided by the Act, unless he falls within certain stated exceptions which result from circumstances entirely beyond his control.

The immunity afforded to some tortfeasors extends to the first \$2,000 economic loss of the tort victim and to all general damages for a tort victim that does not meet one of the 6 scattered eligibility provisions. But, tortfeasors are subject to full liability without any immunity if they happen to cause damage to any of the following groups of tort victims: (a) an out-of-state motorist driving on a Massachusetts highway, (b) a driver whose intoxication is found to be part (but less than half) of the total negligence causing the accident, or (c) a driver whose attempt to avoid arrest is found to be part (but less than half) of the negligence causing the collision. See Section 2 of the Act (excluding them from benefits under the Act). Thus, the rights and immunities of the tortfeasor depend upon the status of the victim, with different rules of liability applying for different victims.

This Court considered a similar attempt to differentiate among persons subject to civil liability in Vigeant v. Postal Telegraph Cable Co., 260 Mass.

335, N.E. 2d (1927). In the Vigean case, the Court held that a statute imposing absolute liability on a telegraph company for damage caused by impact with one of its poles, which left unchanged the usual rules of liability for every other utility pole owner, constituted a denial of equal protection.

"The single contention here urged in behalf of the defendant is that the statute deprives it of the equal protection of the laws. That contention is based on the ground that the statute subjects the defendant and other telegraph companies to unconditional liability, regardless of their due care in the erection and maintenance of their poles, wires or other apparatus and without reference to their fault, and that no such liability is imposed upon telephone companies, or electric light or power companies, or street railway companies, and that the liability of such other companies is left to be ascertained solely by reference to the common law. This, it is argued, creates undue discrimination against telegraph companies and unequal favoritism toward other companies of like general nature.

". . . A classification for the purpose of establishing liability with respect to persons injured by poles, wires and other apparatus without fault, which singles out telegraph companies and excludes telephone companies, electric light, heat and power companies, and street railway companies, does not stand on a reasonable and just basis. We are unable to conceive of any real and substantial distinction for imposing such liability upon a telegraph company and for exempting a telephone company from such liability. So far as concerns a rational and just relation to the safety of the public and to the general welfare, there does not appear to be any real foundation for a classification which fastens such liability on the defendant and frees from such liability on the defendant and frees from such liability electric light, heat and power, telephone, and street railway companies with respect to posts, wires and apparatus."

An even stronger invidious discrimination separates the liability and immunity of tortfeasors under the present Act. See Kenney & McCarthy, No-Fault in Massachusetts, 55 Mass. L.Q. 23, 38-39 (1971).

III. THE ACT CONFISCATES FUNDAMENTAL RIGHTS BY IMPOSING  
UNCONSTITUTIONAL CONDITIONS.

In Aetna Casualty & Surety Co. & Others v. Comm'r of Ins., 1970

Mass. Adv. Sh. 1411, this Court held the rate reduction section of this very statute unconstitutional. In doing so, the Court stated that:

"The writing of insurance is a lawful business and the Commonwealth may not impose unconstitutional conditions upon the exercise of the right to engage therein. . . . The insurers are not required to either submit to confiscatory rates or go out of business. They have a right to rates which are not confiscatory. . . ." 263 N.E. 2d at 703 (emphasis added).

If the legislature cannot confiscate business interests, it certainly cannot confiscate human values.

Respectfully submitted,

RICHARD M. MARKUS  
WILLIAM SCHWARTZ

## APPENDIX A

A Few Actual Cases For Which General Damages Would Have Been Barred By New Act.  
(Information supplied from random sampling of cases by Jury Verdicts Research, Inc.)

Court, Case, No. and Date	Nature of Injury	Medical Expense	Verdict
Superior Court (Middlesex) Brown v. Correa - 6/4/65	Synovitis of knee Chondromalacia of patella Multiple bruises	\$450.00	\$25,000.00
Superior Court (Suffolk) Carey v. Congress Taxi #641,579 12/10/70	Severe prolonged headaches	\$160.00	\$16,643.00
Superior Court (Essex) Musie v. McNiff Bldg. Contr. #139,121 6/27/69	Aggravation of back condition	\$450.00	\$10,000.00
Superior Court (Suffolk) Hourihan v. Wright #602,244 5/21/68	Neck and back strain Acute traumatic anxiety and headaches	\$120.00	\$ 6,000.00
Superior Court (Suffolk) DeRenzo v. Haggerty #607,255 12/30/68	Ulnar nerve contusion	\$265.00	\$ 2,138.00
Superior Court (Suffolk) Lee v. Brown #604,706 9/28/67	Headaches Strain of neck Dislocation left and right clavicles	\$160.00	\$14,375.00
Superior Court (Hampden) Adrian v. Brocher - 11/18/64	Cervical strain Traumatic neurosis	\$400.00	\$ 4,275.00

Court, Case, No. and Date	Nature of Injury	Medical Expense	Verdict
Superior Court (Suffolk) LaFreniere v. Gibbons #590,119 2/16/68	Torn cartilage in knee of 67 year old woman	\$264.00	\$ 9,500.00
Superior Court (Essex) Simpson v. Poor #133,309 1/25/68	Deep tissue elbow lacerations	\$450.00	\$ 4,750.00
Superior Court (Hampden) Standen v. Trago #99,388 2/7/64	Aggravation of herniated disc in back	\$212.00	\$12,500.00
U.S. District Court (Vermont) O'Neill v. Wells #4340 7/20/66	Cervical sprain Activation of neck lesion Traumatic neurosis	\$270.00	\$ 6,000.00
Superior Court (Jersey City, New Jersey) Hannon v. Bollhardt #L-17076-65 7/69	Aggravation of arthritis	\$400.00	\$37,500.00
U.S. District Court (District of Columbia) Curtis v. D.C. G.S. 8273-69 -	Lumbar strain Cervical strain	\$220.00	\$19,135.00
District Court (Bismarck, North Dakota) Sczgiel v. Toffin #961 -	Traumatic neurosis	\$500.00	\$26,600.00
Superior Court (Philadelphia) MacKenzie v. Broughan #1177-35054 6/7/67	Diabetes mellitus from shock	\$500.00	\$72,000.00
Superior Court (Perth Amboy, New Jersey) Cyr v. Pollack - 5/3/70	Traumatic dermatitis	\$450.00	\$23,750.00

## APPENDIX B



COMMONWEALTH OF MASSACHUSETTS  
THE SUPERIOR COURT  
BOSTON 02108

G. JOSEPH TAURO  
CHIEF JUSTICE

August 19, 1970

The Honorable Francis W. Sargent  
Governor of the Commonwealth  
State House  
Boston, Massachusetts 02133

Dear Governor Sargent:

Since my most recent letter to you regarding the need for additional Superior Court justices, it has come to my attention that some opponents of legislation to enlarge the Superior Court contend that the recently enacted "no fault" insurance plan eliminates the need for additional Superior Court judges by doing away with a substantial portion of their workload. Unfortunately, nothing could be further from the truth.

Although the volume of automobile tort suits entered in the Superior Court is large in comparison to other types of entries, the fact is that proportionately few of them are ever tried. Consequently, they consume very little Superior Court judges' time. The minor cases remanded to the district and municipal courts and most of the remaining automobile cases are settled out of court.

A thoroughly documented study in 1966 revealed that only 13% of Superior Court judges' time in Suffolk County was devoted to the trial of automobile tort cases.

The major share of the court's time is used in processing serious criminal cases, land damage, zoning, equity, contract, products liability and medical malpractice suits, appellate review of administrative agencies such as licensing agencies, the Industrial Accident Board and the Civil Service Commission, petitions for extraordinary writs, commitments of narcotic addicts and sexually dangerous persons. *The "no fault" plan will have no effect whatsoever on these cases.* [Emphasis added]

Furthermore, the "no fault" plan applies only to relatively minor claims. These cases are customarily remanded to the district courts and only a minute percentage are ever appealed to and retried in the Superior Court. Their elimination from the judicial process will, therefore, have very little effect on the Superior Court. The more serious automobile tort cases will continue to require a Superior Court trial even under the "no fault" plan.

The Superior Court's workload may well be increased by Superior Court litigation involving the administration and application of the "no fault" plan.

The most critical problem confronting the Superior Court is not motor vehicle tort litigation but rather its spiraling criminal caseload and a constant increase in civil litigation. In no way will the enactment of the "no fault" insurance plan affect this problem. We simply do not have sufficient Superior Court judges to process with fairness, dignity and efficiency our caseload. The unconscionable accumulation of untried cases, civil as well as criminal, clearly demonstrates the need for additional Superior Court judges now. I fully concur with Chief Justice Burger's recent remarks to the American Bar Association in St. Louis:

*"If ever the law is to have genuine deterrent effect on the criminal conduct giving us immediate concern, we must make some drastic changes. The most simple and obvious remedy is to give the courts the manpower and tools—including the prosecutors and defense lawyers—to try criminal cases within 60 days after indictment. I predict it would sharply reduce the crime rate."* [Emphasis added]

In short, I do not believe that the supporters of the "no fault" insurance plan can at this time properly list as one of its features a significant reduction in the business of the Superior Court. It is my considered judgment that to forestall enactment of legislation which would give the court much needed help because of an untried theory and unproven facts would further jeopardize the ability of the Superior Court to effectively administer justice.

*G. Joseph Tauro*

G. Joseph Tauro

TABLE OF AUTHORITIES CITED

CASES	<u>Page</u>
Aetna Cas. & Sur. Co. v. Comm'r of Ins., 1970 Mass. Adv. Sh. 1411	27, 51
Aptheker v. Secretary of State, 378 U.S. 500 (1964)	13
Belcher v. Richardson, 317 F.Supp. 1294 (S.D. W.Va. 1970)	47, 48
Boddie v. Connecticut, 39 Law Week 4294 (1971)	36
Bogni v. Perotti, 224 Mass. 152 (1916)	24
Breithaupt v. Abram, 352 U.S. 432 (1957)	29
Chicago, Milwaukee & St. Paul Railroad v. Wisconsin, 238 U.S. 491	24
City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970)	36
Clark v. Clark, 222 A. 2d 205 (1966)	7
Commonwealth v. Leis, 355 Mass. 189 (1969)	12
Duncan v. Louisiana, 391 U.S. 145 (1968)	2
Durgin v. Minot, 203 Mass. 26 (1909)	24
Fleischman v. Flowers, 25 Ohio St. 2d 131, 267 N.E. 2d 318 (1971)	41, 42
Great Northern Railway v. Minnesota, 238 U.S. 340	24
Hanfgarn v. Mark, 274 N.Y. 22, 8 N.E. 2d 47 (1937), appeal dismissed, 302 U.S. 641 (1937)	6
Heath v. Zellmer, 151 N.W. 2d 664 (1967)	7
Labine v. Vincent, 39 Law Week 4344 (1971)	35, 36
Levy v. Louisiana, 391 U.S. 68 (1968)	35
Louisville & Nashville Railroad v. Central Stockyards Co., 212 U.S. 132	24
Mulvey v. Boston, 197 Mass. 173 (1908)	3
Nebbia v. New York, 291 U.S. 502 (1934)	12
New York Central R. Co. v. White, 243 U.S. 188 (1917)	30
Northern Pacific Railway v. North Dakota, 236 U.S. 585	24
In re Opinion of The Justices, 211 Mass. 618 (1912)	6
Opinion of The Justices, 322 Mass. 755 (1948)	12
Rochin v. California, 342 U.S. 165 (1952)	3
Shapiro v. Thompson, 394 U.S. 618 (1969)	19, 35
Shelton v. Tucker, 364 U.S. 479 (1960)	13
Sherbert v. Verner, 374 U.S. 398 (1936)	13
Silver v. Silver, 280 U.S. 117 (1929)	6, 7
Talley v. California, 362 U.S. 60 (1960)	13
Tate v. Short, 39 L. W. 4301 (1971)	36
Truax v. Corrigan, 257 U.S. 312 (1921)	6, 33
Umpleby v. Dorsey, 227 N.E. 2d 274 (1967)	1
United States v. Cruikshank, 92 U.S. 542 (1875)	3
Vigean v. Postal Telegraph Cable Co., 260 Mass. 335 (1927)	50

TABLE OF AUTHORITIES CITED (continued)

STATUTES		<u>Page</u>
Massachusetts Constitution		
Art. VI		34
Art. VII		34
U. S. Constitution		
Art. XIV		
§1		34
West's Annotated California Codes, Unemployment Insurance		
§2601		15
Mass. G.L. c. 90		
§34A		46
§34M		46
Mass. G.L. c. 231		
§140B		16
§140C		16
§6D		38
New Jersey Statutes Annotated		
Title 43, Subtitle 9		15
New York Workmen's Compensation Law		
Article 9		15
MISCELLANEOUS		
A.B.A., Report of the Special Committee on Automobile Accident Reparations, 103-105 (1969)		17
Alvarez, The Neuroses, p. 240 (1951)		41
A.M.A., Guide to the Evaluation of Permanent Impairment of the Extremities and Back, pp. 97, 99, 101-105		41
Blum & Kalven, Public Law Perspectives on a Private Law Problem, 25-27 (1965)	30, 31, 32	
Brainard, Prices and Politics, 6 Trial 24, 45 (Oct/Nov 1970)		27
Carlova, Could you make it in New York City?, Medical Economics, 110, 117 (Feb. 16, 1970)		43

TABLE OF AUTHORITIES CITED (continued)

MISCELLANEOUS	<u>Page</u>
Columbia University Council for Research in the Social Sciences, Report by the Committee to Study Compensation for Automobile Accidents 139, 140 (1932)	9, 10
Congressional Record, March 24, 1971, S.3754	8
Cox, The Supreme Court 1965 Term--Forward, 80 Harv. L. Rev. 91, 95 (1966)	35
Department of Transportation, Automobile Personal Injury Claims	
Vol. I (1970)	
Table IV-2 p. 30	5
p. 113	23
p. 120	16
Vol. 2 (1970)	
p. 164	40
p. 166	40
p. 169	40
p. 171	40
p. 173	40
p. 175	40
Department of Transportation, Comparative Studies in Automobile Accident Compensation (1970)	18
Friedman, No-Fault Insurance - A Premature Destruction of the Tort Liability Reparations System in Automobile Accident Cases, 46 Notre Dame Lawyer 542, 561-563 (Spring 1971)	19, 20
Ghiardi & Kirchner, Automobile Insurance: The Rockefeller-Stewart Plan, 37 Ins. Counsel J. 324, 326 (1970)	18
Graham, Advance Payment in Personal Injury Claims, 3 Forum 208 (1968)	16
2 Harper & James, Torts	
§25.10 (1956)	5
James, Supplement to Vol. 2, Harper & James, Torts 141-145 (1968)	5
Keeton & O'Connell, Basic Protection for the Traffic Victim, page 496 (1965)	2
pp 1-5	13
Kenney and McCarthy, No-Fault in Massachusetts, 55 Mass. L. Q. 23, 25, 40 (1971)	7, 29, 50

TABLE OF AUTHORITIES CITED (continued)

## MISCELLANEOUS

	<u>Page</u>
Lascher, Hard Laws Make Bad Cases, 9 Santa Clara Lawyer, 1, 5 (1968)	7
Lemmon, Ingredients for Reform, 6 Trial 56, 58 (Oct/Nov 1970)	16, 18
Letter from C. J. Tauro, 6 Trial 49 (Oct/Nov 1970)	22
McCormick, Damages 88 (1935)	5
Marryott, Testing the Criticisms of the Fault Concept, 35 Ins. Counsel J. 112 (1968)	25
Mock, Skull Fractures & Brain Injuries, p. 54 (1950)	40
Morris, Liability for Pain and Suffering, 59 Colum. L. Rev. 476 (1959)	5
New York Law Journal p. 1 (April 26, 1971)	15
The New York Times, Dec. 15, 1969, p. 41 April 24, 1971	29 21
91st Congress, 2d Session, Senate Bill No. 4339	13
Note, 82 Harv. L. Rev. 148, 151 (1968)	2
Note, Developments in the Law of Equal Protection, 82 Harv. L. Rev. 1065, 1099, 1101 (1969)	36
Olender, Proof and Evaluation of Pain and Suffering in Personal Injury Litigation, 3 Duke L. J. 344 (1962)	5
Pa. Action Comm. for Highway Safety, Some Proposals for Saving Life and Property and Reducing the Cost of Automobile Insurance, 1970 Ins. L. J. 692	19

TABLE OF AUTHORITIES CITED (continued)

MISCELLANEOUS		<u>Page</u>
Petitioner's Brief, pp. 11-35		3
Pitkin, The Dilemmas of Auto Insurance, The Legion Magazine, p. 8, 48 (April 1969)		18
4 Restatement of Torts		
§905		5
§924		5
Ruben and Williams, The Constitutionality of Basic Protection, 1 Conn. L. Rev. 44, 46, 54 (1968)		6, 8, 9
Ryan, Arbitration Cuts Philadelphia Backlog, 10 For the Defense 42 (June 1969)		15
Schwartz, A Commentary on the Constitution of the United States, Vol. 2, §§474-77 (1968)		36
Spangenberg, The Public Attitude, 6 Trial 34 (Oct/Nov 1970)		29
Struve, The Less-Restrictive Alternative Principle and Economic Due Process, 80 Harvard L. Rev. 1463 (1967)		12
Wechsler, Textbook of Clinical Neurology, p. 509 (1955)		41
Wormuth & Mirkin, The Doctrine of the Reasonable Alternative, 9 Utah L. Rev. 254, 257 (1964)		12

## EXHIBIT A

(The following information was referred to on p. 651:)

*Surveys, Attitudes And Propaganda*

Page 277

## Surveys, Attitudes And Propaganda

A Critique of the Department of  
Transportation Research Report,  
"Public Attitudes Toward Auto Insurance"DONALD K. ROSS  
*Milwaukee, Wisconsin*

## INTRODUCTION

The only certain conclusion which can be drawn from this Department of Transportation report<sup>1</sup> of 266 pages is that public attitudes revealed by the sample of 3,070 family units, 2,543 of them car-owning families, are not sufficiently strong, fixed, clear or informed to provide a solid doctrinal base for proponents of change in the automobile accident reparations system.

The interviewing technique, tabulation and choice of sample are flawless in this survey by the Survey Research Center, Institute for Social Research, University of Michigan, Ann Arbor. However, there are shortcomings. Questions often fail because of omission and the technical nature of the subject matter. Thought relationships which are at disparity with reality produce slanted responses. Gratuitous remarks and debatable forecasting of future trends detract from the quality of the study.

Besides the shortcomings of the survey, serious danger exists in the use made of the study's results. Purposeful distortion to achieve an end, regardless of the means, can only lead to backlash from an irate public when it discovers that dubious change has been forced in disregard of expressed need.

The title of this study, "Public Attitudes Toward Auto Insurance," is a misnomer. Instead, much space has been given to the conflict between the principles of total no-fault proposals and the tort liability system based upon fault. These differences extend far beyond the field of automobile insurance; they reach into the basic social structure. The study blurs distinctions between the insurance and tort liability systems which are interrelated in practice but



DONALD K. ROSS, who holds both a BA and MA degree in Journalism and who taught at Marquette University for 15 years and held the rank of Professor, has been Information Director of The Defense Research Institute, Inc. since 1965.

which have separate reasons for being. One relies upon profit to exist, while providing a buffer for the individual against financial tragedy. The other, accepting values of society, applies legal principles to determine damages based upon fault. One institution does not have the right to impinge upon the other or to define its ills in mutual terms. Despite critics to the contrary, there is no public outcry directed against the basics of the fault concept.

As nearly as can be determined, the Michigan survey has presented characteristics of total no-fault reparations to its survey audience, without consideration being given to proposals of self insurance which would retain recourse to the courts in serious instances. It is with this assumption that this critique has been prepared.

## PROBLEMS OF ATTITUDE

Although the authors of the Michigan study state that the survey is intended to be objective and not to promote or support any particular point of view, perplexing conclusions as well as expressed views of personnel of the Research Center must be considered in a thorough evaluation. Entering into this problem are the limited knowledge of a technical area possessed by the researchers and the quality of guidance given by others to help frame the survey

<sup>1</sup>Department of Transportation Auto Insurance and Compensation Study, Public Attitudes Toward Auto Insurance (Mar 1970) [hereafter cited as DOT Report].

questions. Note the content, bias and oversimplification of the following statement made by a Michigan staff member:

... those people who do bad things pay those people who don't do bad things. In other words, that is the fault system. If you describe the fault system in very simple terms—as you must in a card on one of these surveys—it sounds eminently reasonable that the people who are at fault should pay the people who are not at fault. After all, what's wrong with that? Of course, as you all know, it's only in practice that this thing doesn't work well or so simply. It is very hard to establish fault. There are very large lawyers' fees very often . . . One thing which has happened very frequently is that lawyers often representing an insurance company hover over the bedside, with whispering in the ear: "You don't want a long trial, do you?" Not to mention the problem of many, many accidents where really no one is at fault, except perhaps God.<sup>2</sup>

Although the above statement cannot be used to damn the study itself, such expression is not knowledgeable, does not approach the full compass of the subject matter, is biased and attempts to relate unlike variables in a prejudicial manner. If such lack of knowledge is typical, then the research team must have been aided in forming the general sweep and nature of the survey questions which were posed to respondents. If aid in framing the questions came from those intimately familiar with the fault versus no-fault controversy, truth and objectivity might have been more difficult to attain if they had taken a pro or con position.

Communication is indeed a fine art. Slanted viewpoint or personal conviction of the questioner is easily transmitted in the interview process—through simple intonation, a lifted eyebrow or slight sneer—even if the interviewer cautiously follows the exact wording of a question as it appears on a card. An added explanation of the questions, which certainly would be needed when dealing with technical subject matter, can be distorted through personal predisposition and inadequate understanding of the interviewer himself.

If the mechanics of the survey technique matched any of these imperfections, the re-

sults are even more suspect than the following detailed critique indicates.

## PUBLIC ATTITUDE MEASUREMENT

History shows that pollsters who have attempted to measure public attitude on even the most widely discussed topics of the day have been ridiculed for erroneous projections. Difficulty of attitude measurement demands that reliable researchers present their results as tentative, complete with a percentage deviation to allow for error.

The Michigan study is filled with the proper number of such qualifications to indicate that the results are not to be construed as a solid bedrock for action programs. Those charged with responsibility for such action programs would do well to read and reread the opening sentences of the chapter titled "Summary and Conclusions":

The American people's attitudes toward automobile insurance are neither wholly favorable nor wholly unfavorable. Since auto insurance is a complex matter having a variety of features some of which may be approved and others disapproved, it was expected that a study of public attitudes would yield a picture neither rosy nor dark. Not only is the American public divided; even contradictory findings have emerged.<sup>3</sup>

Such a statement by the authors could be expanded to include the fact that tort liability and its ramifications also are not the most popular or understandable topics currently being discussed. Therefore, similar doubts regarding the reliability of public attitude in respect to the tort system and the underlying fault concept would also hold true. Difficulty of measurement and reliability are further detailed by the words of the aforementioned Research Center speaker:

... the only way you really can get at this is with a direct question, is to have one card with the details of current procedures of auto insurance and another card with the proposed system as it would be after the introduction of the no-fault system and ask consumers which one of these do you like better and why. This is extremely hazardous, however. Simply because first, . . . most people don't have

<sup>2</sup>Speech to CPCU Clinic, Des Moines, Iowa (Mar 26, 1970).

<sup>3</sup>DOT Report, note 1 supra at 9.

very firm attitudes about insurance. People have not thought too much about insurance. Secondly, it is always hazardous in survey research to present people with something which does not exist, with which they have had no experience, and ask them how they would react to this; . . . It's a little bit like asking someone if they would love their wife if she were very beautiful; it assumes a condition contrary to fact.

The consumer has a difficult time putting himself in this position. Therefore, you tend to get a reaction off the top of the head. And it is sometimes in a situation like this that consumers will focus on things which are really not very germane to the problem . . .

Most of the surveys show, however, that—for reasons that they can't explain—there is at least a 50-50 split of people preferring the new plan . . . What this means, to me at least, is that people are aware of difficulties—most particularly the high price of auto insurance—are interested in anything that promises improvement and are ready for change.

So what kind of conclusion should be drawn from this? I think the point I have been trying to make can best be summed up as follows—namely, existing attitudes toward the no-fault plan can be summarized very quickly; namely, there aren't any because it doesn't exist. What attitudes toward a no-fault plan would be were it to go into effect might be entirely different from the attitudes as currently measured.<sup>4</sup>

Elaboration on the thoughts of the speaker, related to the completed survey, is necessary. Not only must attitudes expressed in favor of a no-fault plan be labeled as tentative, they must be considered from the viewpoint that explanation by the interviewer was needed before any response could be elicited on this topic which is unfamiliar to the lay public. At times, explanation, as presented was biased in favor of no-fault because thought was linked to lower insurance costs. In all instances, explanations were incomplete regarding the deficiencies of total self-insurance proposals. Therefore, it is certain that future attitudes would change when hitherto unknown limitations of the proposals began to burden those who buy automobile insurance.

<sup>4</sup>Speech, note 2 *supra*.

In addition, the Research Center spokesman, in effect, recommends "change for the sake of change" and asks that this be done on the basis of public attitude. Admittedly, this attitude is ill-defined. Furthermore, worthwhile leadership which effects change, is not a reaction to public attitude alone. Leadership includes a reasoned approach by fully-informed specialists who, according to their best lights, should act in the public interest:

. . . I believe that the fact that this new plan does achieve such a high rating in answer to these questions shows the consumers are ready, would react very, very favorably to something which resulted in more of the money that goes into premiums going back to consumers in the form of claims payments and would cover people in the case where they are, strictly speaking, at fault and suffer a loss.

The common thread that runs through all these things (campus riots, rush hour traffic and air controllers' strikes) is that America these days has come to be very much a society where things only really get done, changes take place when a crisis gets so bad that it is seen by very many people and someone finally does something about it. Usually, it takes the form of some very dramatic, emotional individual like Ralph Nadar pointing to the difficulties . . . When things get to that point, in other words when a crisis is seen as a crisis by the majority of people, then the people who have done nothing about that crisis before it becomes a crisis get a black eye. I think the automobile insurance industry might be in that kind of a situation right now. In other words, the automobile insurance industry should not wait for attitudes of consumers to tell them that a change is needed. For the reasons that I have explained, that comes rather slowly. Rather, the auto insurance industry should take leadership in this field—get a plan which is really better for consumers before consumers perceive a crisis.<sup>5</sup>

Such a statement must surprise forward-looking insurance executives who have quietly been developing improvements in the public interest over the decade, despite the goad of politicians and other critics whose harangues admit no accomplishment and impede progress.

<sup>5</sup>*Id.*

In addition, it is impossible to state that there is a crisis on the basis of this survey or to gauge the real problems of the insurance industry as revealed by the selected letters from consumers which have been appended as a portion of this Department of Transportation study.<sup>6</sup> It must be noted that these are *selected* letters, and it is well known that only the disgruntled communicate while very few of the satisfied ever tell of their satisfaction. When it is considered that insurance is a business, a balanced view of the letters provided by the study must insist that the majority of the persons involved fully deserved cancellation, non-renewal or assignment to high risk categories. Other letters also show clearly why some insurers have renewed their efforts to control fraud.

## ANALYSIS OF SURVEY QUESTIONS

### INITIAL ATTITUDE

Early in the survey, a question sought the initial attitude of respondents:

Taking into account whatever experience you have had with auto insurance, would you say that you are satisfied or dissatisfied with it?<sup>7</sup>

In response to this question, 65 per cent expressed satisfaction and 22 per cent expressed dissatisfaction.<sup>8</sup> Only 2 per cent of those dissatisfied made any reference to the fault concept. Note that the question does not differentiate between the insurance and legal systems. Also note that the authors attempt to minimize the degree of satisfaction expressed:

Much survey experience with the public's satisfaction or dissatisfaction regarding a variety of prevailing conditions indicates that what exists at a given time can almost always be expected to be viewed as "all right" or as satisfactory by many people. This is so not only because some and possibly many people will have had either a satisfactory experience or at least no adverse experiences but also because a random sample will always contain some and possibly many people who have given very little thought to the subject of the inquiry. The latter will seldom say that they are dissatisfied. For many people auto insurance is a routine matter consisting chiefly

of more or less automatic annual renewal of their policy.<sup>9</sup>

In effect, this states that the majority will vote for an existing institution or the status quo. As a generality, the statement has merit, but it is only a generality. This is an age of criticism, directed at institutions. Most persons have had considerable experience with auto insurance, but few are tranquil during the "routine renewal of their policy" which also involves payment of increasing premiums. Other portions of the survey indicate that cost is one of the major complaints and that many believe that insurance prices have increased more than prices of other things.<sup>10</sup> For years, experts within and outside of insurance have indicated that the industry's public relations needs improving, that the public is not being reached in respect to the true merits of insurance companies. In addition, insurance has been the whipping boy of publicity-seeking politicians. Although experts understand clearly the intricate divisions within their particular fields, the public blurs such distinctions. Thus, they view all insurance as a single entity. And who hasn't had difficulty in understanding the wording of a policy? Furthermore, insurance is an intangible which is neither felt, tasted, smelled or put to any other practical use except during an emergency. The outflow of premium money is continuous; the return seldom, if ever. Like the services of an attorney, insurance is valued only during periods of high emotion. In either instance, the process is accompanied by mental strain, sometimes by physical anguish and always by outlay of time and personal energy. These facts increase unpopularity. Vigorous support of this status quo — the institution of automobile insurance — would not be automatic. Therefore, the fact that 65 per cent express satisfaction has added significance.

### SHIFTS IN ATTITUDE

Authors of the study state that toward the end of the interview more people favored a no-fault system of automobile insurance than the prevailing fault system. They also state that 44 per cent favored claiming damages from their own insurance companies only and receiving no compensation for pain and suffering, irrespective of

<sup>6</sup>DOT Report, note 1 *supra* Part II at 137.

<sup>7</sup>*Id.* at 18.

<sup>8</sup>*Id.* at 17.

<sup>9</sup>*Id.* at 10.

<sup>10</sup>*Id.* at 11.

AGENCY

which party was at fault; 31 per cent gave this opinion definitely and 13 per cent conditionally. On the other hand, 36 per cent opted for the present system in which the guilty party pays for damages, including pain and suffering; 20 per cent expressed a definite and 16 per cent a conditional preference.<sup>11</sup> This leads to the following question: "How did this change come about and is the final attitude any more reliable than the initial response?"

One cause of change is the fact that key questions, A67, A68 and A68a, were asked in respect to evaluation of the respective systems only after a long series of questions, A7 to A54, had set forth any number of dissatisfactions which might be present—delay, partial compensation, cancellation, etc. Take a happy man and point out everything which might be wrong, and he will tend toward the negative; he will become more critical of the present system when he is questioned later regarding it.

Furthermore, key questions themselves deserve careful study. Question A67, tabulated in Table VII-6 reads as follows:

Suppose auto insurance were made similar to fire or hospital insurance. Then, in case of an accident your losses—including damage to your car, hospital or doctor bills, and loss of wages—would be paid by your own insurance company, no matter whether you or the other driver were at fault. Would you be in favor of or opposed to such a system?<sup>12</sup>

It would seem natural to expect that 57 per cent would favor such a system, as described, and that only 27 per cent would give unfavorable answers. It sounds easy and fair-minded. It is doubtful that most respondents were expert in semantics; therefore, they would fail to distinguish between the phrases "similar to" as against "the same as." But there are key differences between fire and auto insurance. In fires, the cause is often found in nature; in accidents on today's highways, the cause routinely can be traced to man. The thoughtful man cannot subscribe to the theories that most highway accidents are attributable to a roll of the dice, a natural catastrophe or the intervening hand of God. Furthermore, fire insurance usually recompenses for total property loss except for depreciation. It does not pay for

loss of life or personal injury. Current no-fault proposals would not cover all damages incurred by the individual, despite the glowing description. Furthermore, the individual would have to pay additional auto insurance premiums. For example, damage to his automobile could not be assessed against the wrongdoer. Such gaps are not mentioned to the respondents in the question which was posed.

It also is telling that Question A67 does not include the problem of pain and suffering, although it is part of Question A61 which has similar purpose:

On this card you will find a list of various things people have mentioned as reasons for carrying automobile insurance. As I mention each one, would you please tell me whether you think it is a very important purpose of auto insurance, fairly important, or not at all important.<sup>13</sup>

In response to the listed choices, 46 per cent said that payment for pain and suffering was "very important" and another 37 per cent listed such payment as "fairly important."<sup>14</sup> Presumably, in response to Question A67, respondents were not aware that current no-fault proposals either would delimit or eliminate payment for general damages, "pain and suffering." A total of 98 per cent in these two categories of response also indicated that they wanted payment for property damage, perhaps unaware that such payment under no-fault would be gained only from extra insurance coverage which they, themselves, would finance. In addition, another 87 per cent sought compensation for loss of wages, probably without knowing that no-fault proposals would delimit such compensation.<sup>15</sup>

#### ATTITUDES AND COSTS

Response to Questions A68 and A68a which seek a choice between the fault and no-fault systems furnishes no reason for rejoicing by no-fault proponents. To repeat, these questions were posed after a long series which suggested numerous complaints which might be made against the present system. In addition, the element of lower cost was tied to the no-fault system. This claim of lower costs for no-fault has been successfully disputed by actuaries.

<sup>11</sup>Id. at 9.

<sup>12</sup>Id. at 73.

<sup>13</sup>Id. at 64.

<sup>14</sup>Id.

<sup>15</sup>Id.

Even if lower costs were possible, it would be gained only through reduced benefits for innocent accident victims.

It also is important that some no-fault proposals provide that auto insurance would reimburse injured persons only after other insurance and fringe benefits have been financially exhausted. Should such primary sources rule out payments for auto connected injuries, auto insurance costs would increase.

Question A68 follows as do the variables of the systems presented to the respondents:

Suppose you had a choice between two kinds of auto insurance which cost about the same. Which would you prefer?

Type X pays for all expenses of the accident (including medical costs and loss of earnings) and sometimes an additional amount for pain and suffering; Requires establishing proof that the other driver was at fault and other person has right to sue you for accident injuries; Payment by the other driver or his insurance company; Depending on the other driver having insurance or assets sufficient to pay you for your losses.

Type Y pays for all expenses of the accident (including medical costs and loss of earnings), nothing for pain and suffering; Requires no need to establish proof that the other driver was at fault and other person has no right to sue you for accident injuries; Payment by your own insurance company; Depending on the limits of your own insurance (not the limits of the other driver's insurance assets).<sup>18</sup>

Companion Question 68a reads as follows:

Suppose the second type of insurance—the one which pays no matter who is at fault—costs less than the first type; would you then prefer Type X or Type Y insurance?<sup>19</sup>

The statistical tabulation of responses by the Survey Research Center is inadequate regarding the above two questions. It states that 40 per cent favors no-fault without qualification but that 35 per cent favors fault even if it is more costly.<sup>18</sup> The "equal cost" figure is missing. In addition, the tabulation indicates that 15 per cent can

be added to 40 per cent if the cost of no-fault were lower.<sup>19</sup> On an "equal cost" basis, it would be logical to assume that the fault concept would have a slight lead since more than half of this 15 per cent figure would favor that system. It would be a case of "too close to call," based upon these two questions. However, when the order of questions and the lack of understanding of no-fault, as it truly would exist, are added, many more individuals would hew to the personal fault ethic which is a part of our Western culture. In addition, respondents who were owners and operators of commercial vehicles would vote for fault if they knew that various no-fault plans would hold them responsible whether or not they caused the accidents.

Reference is again made to an initial claim by authors of the survey that in later questioning respondents favored seeking damages from their own insurance companies and foregoing payments for pain and suffering, irrespective of fault. The margin is cited as 44 per cent against 36 who chose the current system.<sup>20</sup> It must be emphasized that cost once again enters into this evaluation. If it is admitted that no-fault would cost less, that system would indeed have the edge. Such low cost is not admitted, nor can other variables of influence previously mentioned be brushed off as fiction.

It is, apparent that cost is the leading attribute that the public uses in judging auto insurance plans. But cost differences would have to be large to change personal habits and convictions. Few persons are willing to "shop around." In response to Question A48a which asked, "Do you think that once you are insured with a generally satisfactory company you are better off sticking with it, or should you keep shopping around for a better deal?" 76 per cent said they were better off to "stick with a satisfactory company."<sup>21</sup> It also is important to note that three out of four believe that costs of auto insurance have climbed in the last few years. Many believe that the increase exceeds the rising cost of other goods and services. They tend to see the increased number of highway accidents as the major cause of this rise.

In respect to cost, a blunt misrepresentation of the study itself is found in the illustrations employed on page 82 of the publi-

<sup>18</sup>Id. at 75.

<sup>19</sup>Id.

<sup>20</sup>Id.

<sup>19</sup>Id.

<sup>20</sup>Id. at 9.

<sup>21</sup>Id. at 118.

cation. The caption reads, "When given a choice between fault and no-fault systems, more than half preferred no-fault." The foregoing shows this is patently false and will result in nurturing distortions and erroneous conclusions.

Another strong influence revealed by the study is the danger of cancellation—a potential threat to the fault concept. Most at least knew someone who was affected by cancellation. An additional influence was the introduction of delay as a part of the present system. Here, the reaction is not as pronounced because less have personal experience.

#### CONTRADICTIONARY ATTITUDES

Respondents answered two questions in a contradictory manner—roughly 60 per cent favored both the fault and no-fault systems. One question A67, previously cited, compared no-fault auto insurance to fire or hospital insurance and ended with "Would you be in favor of or opposed to such a system?"

The other, Question A65, follows:

In most states, this is how automobile liability insurance is set up now: If you are involved in an accident, you have a claim against another person (or his insurance company) only if you can prove that the other person *alone* is at fault. Would you say that this is a good system, a bad system, or what?<sup>22</sup>

In response to Question A67 which presented the no-fault system, as described, 57 per cent approved and 30 per cent disapproved.<sup>23</sup> Answering Question A65, 56 per cent approved of the fault concept, as described, and 28 were labeled as dissatisfied.<sup>24</sup> It also should be noted that the questions are not completely comparable because of wording—in one, the choice was "good system versus bad system" and in the other, it was "in favor of versus opposed to." The confusion is perhaps best pinpointed by the authors' words:

Thus very many respondents either did not see any contradiction in approving two different insurance systems or changed their opinions when they heard of a no-fault system.<sup>25</sup>

Apparently, about one-fourth of the respondents gave contradictory responses to the two plans. An additional thought was not presented to them—how many saw the necessity of a state's having to choose between the plans or how many saw them as choices for individuals to make? And it should be noted that, although the statement of contributory negligence was properly qualified as applying "in most states," no mention is made of the fact that the doctrine of comparative negligence is now a part of tort liability in Puerto Rico and 12 of our states—Nebraska, South Dakota, Mississippi, Wisconsin, Maine, Minnesota, Massachusetts, Hawaii, New Hampshire, Vermont, Arkansas and Georgia. If a decision were made for no-fault by federal governmental leaders, it would be in the face of what leaders in these states have considered an improvement in the existing system.

#### FAULT AS A DETERRENT

In still another area, a sweeping conclusion detrimental to the fault system is based upon a response to an inadequate question. Question A62 and the response purport to show that the deterrent effect of the fault system upon highway accidents is not valid. The question follows:

Some say that people drive more carefully because they know that they have to pay for damages if they hit a person. Others say that how a person drives has nothing to do with his being responsible for such damages. What do you think?<sup>26</sup>

When 58 per cent of the respondents answer that liability makes no difference in driving, the authors of the study then decry the deterrence effect of fault:

... few respondents thought that people drive more carefully because they know that they would be liable for damages if they are at fault in an accident. In the opinion of most people, how a person drives is not influenced by his legal responsibility for the damage or injury he might cause. Thus, the notion that the present liability based insurance system has an important educational or deterrent effect on drivers is not supported.<sup>27</sup>

It is important that key elements of the insurance-tort systems have been omitted in

<sup>22</sup>Id. at 72.

<sup>23</sup>Id. at 73.

<sup>24</sup>Id. at 74.

<sup>25</sup>Id. at 74.

<sup>26</sup>Id. at 67.

<sup>27</sup>Id. at 97.

this evaluation. Other questions indicate that cancellation of insurance is uppermost in the minds of numerous respondents. When a driver has repeatedly been found at fault, resultant cancellation as well as increased insurance premiums certainly are deterrents of the system. Also neglected is the entire process which calls for investigations, confrontations, a loss of time and personal inconvenience. Such are not popular and are deterrents. Also, most persons accept the group standard of conduct which has impact upon individual responsibility, and, therefore, upon the highway accident level. This group standard and individual responsibility would be weakened by no-fault. In addition to supporting these named positions, Lawrence Lawton, New York traffic consultant, has further declared that criminal law deterrence would be diluted if the impact of civil law is lost, and if no-fault were enacted, a definite increase in highway accidents, deaths, injuries and property loss could be expected.<sup>20</sup> Lawton's research is supported by other professionals.<sup>20</sup>

#### FAULT DETERMINATION

In a further attempt to show a general disregard for the fault system, the study states:

Some doubt is cast on a major conceptual support for the present tort liability system, namely, that it is the guilty party who should pay, by the finding that the American people are about equally divided in their opinion as to whether it is easy or difficult to determine who the guilty party in an accident is.<sup>20</sup>

In this respect, the general public is not a reliable guide since persons involved in an accident usually are not charged specifically with determining where the fault may lie. Fault is fixed by a painstaking process which involves insurance claimsmen, attorneys, judges, police and scientific-minded experts who have made such determinations their life work. Further-

more, whether the guilty should pay and the difficulty of determining fault are separate issues and should be so considered.

Two other major surveys of public attitude directly contradict basic premises of the Michigan study.<sup>20a</sup> One, conducted by Market Facts, Inc., of Chicago, shows that over 90 per cent indicate that most accidents are the fault of someone and that this can be determined if the facts are carefully studied; six out of 10 opposed no-fault on the basis of a comprehensive description which was presented to them; and six out of 10 also believe that "pain and suffering" is a legitimate part of damages.<sup>21</sup> Findings of the Michigan study also are challenged by a survey conducted by State Farm Mutual Insurance Company.<sup>22</sup> Here, 2,669,034 policy holders, or 94 per cent of the respondents, favored the basic precept of tort liability by affirming that "the driver who causes an accident, or his insurance company, should pay for the losses of the other people in the accident." Answering a cross-check question, 89 per cent said that cause of an accident should definitely be considered when arriving at the decision regarding payment for losses. And 72 per cent believe that those hurt in car accidents should be able to receive money not only for medical and hospital expenses but for "pain and suffering." It also should be noted that the term, "pain and suffering" in the Market Facts study was comprehensively defined in a legal framework so that respondents would know more precisely what they would be surrendering if they opted for no-fault. No such attempt was made in the Michigan study; certainly, popular definition and understanding of this phrase do not match what would be lost legally.

#### GRATUITOUS PRESUMPTION

Wishful thinking is an apt description of an unwarranted forecast of the authors.

<sup>20a</sup>A second Department of Transportation Automobile Insurance and Compensation Study, Public Attitudes Supplement to the Economic Consequences of Automobile Accident Injuries (Sept 1970) employed many of the same questions developed by the University of Michigan for the earlier survey. This study measures a smaller audience. Since the same questions are used, many criticisms of the Michigan study should be applied to this one.

<sup>21</sup>See Major Survey Demonstrates Public Support of Fault, 10 For the Defense 110 (Dec 1970).

<sup>22</sup>See State Farm Survey Shows 94% Favor Fault Concept, 11 For the Defense 15 (Feb 1970).

<sup>20</sup>Lawton, *Psychological Aspects of the Fault System as Compared with the No-Fault System of Automobile Insurance*, DRI Special Report (Vol. 1969 No. 11, Dec. 1969).

<sup>20</sup>Testimony by Dr. James C. Mancuso, Professor of Psychology, State University of New York-Albany, before Joint Legislative Committee Hearings on Insurance, Senator Bernard Gordon, Chairman, February 10, 1971, Buffalo, New York.

<sup>20</sup>DOT Report, Note 1 *supra* at 11.

Such presumption has no place in a study which is purportedly an objective search for truth. The quarrelsome statement is as follows:

A question may be raised about the probable direction of future changes in public opinions and attitudes. Should the American people receive more information during the next year or so, for instance, by insurance companies proposing the introduction of new features for automobile insurance, or through a more general public debate over the advantages and disadvantages of the tort system, will public attitudes then change? Clearly, there are no solid scientific data on which to base an answer. But the shift in opinions observed during the interviews from general satisfaction to an approval of substantial changes in the insurance system makes it probable that the widespread availability of more information about such alternatives as a no-fault plan will increase the support for a change in the present system.<sup>33</sup>

Thankfully, the authors temper their previously quoted conclusion:

As mentioned earlier, it appears that there is receptivity to change but that as of now there exists neither overwhelming support for, nor overwhelming opposition to, a change in the insurance system toward some no-fault alternative.<sup>34</sup>

As stated previously, there is no solid scientific data on which to base such a conclusion. It is doubtful that there was even a legitimate shift of attitude during the interview. Rather, the seeming shift is caused by sequence and by slant, ambiguity and narrowness of the questions. Full information about the fault and no-fault concepts could be highly damaging to the latter since deficiencies, if explained, will show that this approach is inferior to the system which has proved its worth. Programs to inform the public would not be one-sided explanations of no-fault proposals, filled with glittering generalities which could never be fulfilled. Fault proponents also would launch information programs, with full faith in an informed public. Instead of such misleading forecasting, a summary statement such as the

following would have been fair and objective:

There seems to be no strong blanketing support for no-fault as an alternative to the present system. There has been no general public outcry against the tort system. Problems of insurance are not problems of law and vice versa. Alternatives will be considered seriously by the public to the extent that they lower the cost of auto insurance or alleviate other problems such as cancellation, non-renewal and insolvencies. Conversely, they will shun alternatives which appear to raise costs or to create other problems. The public gives no mandate to any plan; what is sought is reasonable cost and a minimum of problems.

#### USE OF STUDY RESULTS

As stated, shortcomings of the Michigan study itself are unfortunate. But the real danger is the use to which the results can be turned. Consider, for example, the following statement:

The results of this survey show *clearly* that when the people are *informed* and *understand* the "no-fault" or "insure yourself" system of automobile insurance a *majority* of them recognize its *advantages* over the present system and register their reaction in favor of the "no-fault" plan.<sup>35</sup> (Emphasis added)

Prior comment in this article has shown that the survey results are not clear, that relatively little informing could go on in the short wording of the questions asked, and that there is no direct evidence that the respondents understood either the fault or no-fault concept even after having been "informed." There also is no evidence that a majority prefer the no-fault plan when the direct comparison is made. Only when the assumption of lower cost is made, does a majority favor no-fault. The spokesman is confusing the terms "majority" and "plurality." In addition, only the "advantages" of no-fault have been posed to respondents. This is also done in the continuous bombardment of the mass media by no-fault proponents. The many disadvantages are not presented.

Consider also this public statement, despite deep concern by professionals who be-

<sup>33</sup>DOT Report, Note 1 supra at 12.

<sup>34</sup>Id. at 77.

<sup>35</sup>Insurance Today—Tempo of Debate Quickens on Tort vs. No-Fault Auto Insurance System, *Journal of Commerce* (Apr 15, 1970).

lieve deterrence helps to control rampant highway accident levels:

This is poppycock. We believe that 22 million auto accidents in a year is tragic enough evidence that the lawsuit system is not effective in deterring crashes. We also believe that most people are deterred from careless driving by the real threat of physical injury—both to themselves and to others. We are supported in this belief by the recently published findings of a scientific survey by the University of Michigan Survey Research Center for the U.S. Department of Transportation.<sup>26</sup>

Since the questioning of respondents was elementary and did not cover the subject even in a simplistic manner, such a conclusion is dangerous risk-taking whose end result, if approved, could result in growing

tragedy and death. The gamble is not worth it.

Hopefully, when the Department of Transportation finally speaks out on improvements needed, the statement will be calm, logical and based upon scholarship, as the use of public money dictates.

### CONCLUSION

In the final analysis, it must be said that the public voice has yet to be heard fully and recognizably in respect to what the ultimate automobile insurance and accompanying legal systems should be. It is doubtful that the public will ever speak out in terms of full understanding. Instead, honest decisions based upon the best available knowledge must be made by leaders in insurance, the legal profession and government. Those decisions must be dictated by concern for the public good, not by personal or economic interests.

<sup>26</sup>American Insurance Ass'n News Release (May 1, 1970).

ACQUITTAL

## EXHIBIT B

**AUTOMOBILE ACCIDENT REPARATION:  
THIS ROAD TOWARD REFORM!**



*To Increase the Professional Skill and  
Enlarge the Knowledge of Defense Lawyers*

Volume 1969

Number 12

A Publication Of  
**The Defense Research Institute, Inc.**  
(A Non-Profit, Non-Stock Corporation)  
1212 W. Wisconsin Avenue  
Milwaukee, Wisconsin 53233

**Automobile Accident Reparation:  
This Road Toward Reform!**

Statement of Mark Martin  
Chairman of the Board  
Defense Research Institute

Presented to  
Senate Subcommittee on Antitrust  
and Monopoly Legislation

December 16, 1969

**LIST OF APPENDICES**

The following Appendices were submitted as part of the statement:

**APPENDIX A** — An Analysis and Critique of the Basic Protection Insurance Plan Prepared for Study and Comment by Robert Keaton and Jeffrey O'Connell

**APPENDIX B** — An Analysis and Critique of an Automobile Insurance Proposal Prepared for Study and Comment by the American Insurance Association

**APPENDIX C** — Justice in Court After the Accident

**APPENDIX D** — Responsible Reform — A Program to Improve the Liability Reparation System

**APPENDIX E** — Fault — A Deterrent to Highway Accidents

Note: Additional copies of this statement and the Appendices are available at cost from the DRI Milwaukee office to anyone wishing to submit them to state legislators, state insurance study groups or other interested persons or organizations.

©THE DEFENSE RESEARCH INSTITUTE, INC., 1970

## FOREWORD

For years, the Defense Research Institute and other national and local defense lawyer associations have been committed to an action program intended not only to oppose unwarranted changes in the tort reparations system but also to present a positive and unified approach to its reform in the interests of the public.

Much of our action program has been set forth in special reports and papers which have been given a wide dissemination. The major efforts in this area include the following:

- Justice in Court After the Accident
- An Analysis and Critique of the Basic Protection Insurance Plan Prepared for Study and Comment by Robert Keeton and Jeffrey O'Connell
- An Analysis and Critique of an Automobile Insurance Proposal Prepared for Study and Comment by the American Insurance Association
- Responsible Reform — A Program to Improve the Liability Reparations System
- Fault — A Deterrent to Highway Accidents

Research and writings will continue and additional publications will be forthcoming.

In addition to preparing the foregoing materials and other reports, we have brought our program to the attention of state legislatures, Congress, bar associations, other interested professional groups and the premium-paying public. We have worked closely with the American Bar Association and its Special Committee on Automobile Accident Reparations. In addition, we have worked and cooperated with numerous study groups on a state level.

There has been much study and investigation at the federal level involving the tort reparations system and its funding by private insurance. We have cooperated with all levels of the federal government in these studies and investigations. Much time and effort has been spent during the past year with the Department of Transportation

and its study of the automobile reparations system. This work has involved meetings with the Assistant Secretary charged with the responsibility of the overall DOT study, meetings with the study staff, conferences and consultation with individual members of the staff, and the forwarding of materials, reports, and the exchange of views. The defense bar has had an opportunity to present its position and opinions and to submit information, research and materials to the DOT study staff and to pertinent advisory committees.

The latest action has been to file a statement with the Senate Subcommittee on Antitrust and Monopoly Legislation chaired by Senator Philip Hart of Michigan. The Subcommittee concluded its investigation with a wide-ranging examination of the automobile repair system and invited DRI to present its views. The following statement was presented to the Subcommittee on December 16, 1969, by Mark Martin as Chairman of the Board of the Defense Research Institute. This statement is being forwarded so that you will be informed of DRI's attempts to present a unified defense lawyer approach to the federal investigators and to offer a solution for the improvement of the tort reparations system through a program of evolutionary responsible reform.

James D. Ghiardi  
Research Director

December 1969

**STATEMENT OF MARK MARTIN**  
**Chairman of the Board**  
**DEFENSE RESEARCH INSTITUTE**  
**Presented To**  
**SENATE SUBCOMMITTEE ON**  
**ANTITRUST AND MONOPOLY**  
**LEGISLATION**

**December 16, 1969**

**Introduction**

As the Chairman of the Board of the Defense Research Institute, I am pleased to submit the following statement for consideration by the Subcommittee in its investigation of the so-called "Automobile Accident Reparation System." I regret that the scheduled appearance before the Subcommittee by myself, other officers and staff members of DRI, and representatives of the International Association of Insurance Counsel, Federation of Insurance Counsel and Association of Insurance Attorneys had to be canceled because of the press of other Senate business. However, we welcome the opportunity to present this statement for your consideration and would be happy to receive further inquiry from you should you see a need for additional dialogue.

The Defense Research Institute is a national, non-profit organization with almost 6000 members, headquartered at Milwaukee. The great majority of them are trial lawyers who come from all fifty states, Puerto Rico and the provinces of Canada. These lawyers engage in the defense of civil lawsuits and, in turn, are members of firms which comprise over 20,000 lawyers in those areas.

The Defense Research Institute was organized in 1961 to promote improvement in the administration of justice and enhance the service of the legal profession to the public. We have sought to carry out these objectives.

**Legal Versus Insurance Problems**

Our interest in what has come to be called the "Automobile Insurance Reparation Controversy" arose at the inception of the discussion and debate of the subject. We quickly discovered that the matter had many facets which some persons tended to confuse and group together. In addition to questions relating to the operation of the legal system involved in the auto reparation process (the tort liability system), there were also questions relating to insurance marketing, underwriting, rating and the like. Because these areas are so vast and complex and because our expertise is concentrated in one specific area, we limited our work to a study and analysis of the problems which were claimed to involve the operation of the present legal system. We decided to consider problems involving the business aspects of the insurance industry only as they relate to the tort system. Therefore, my statement will be concerned only with the operation of the tort liability system and those matters outside the system which affect it.

**Legal Questions Relating To  
The Reparation System**

Many problems and criticisms have been placed at the door of the tort liability system. Some claim that all problems, even those related to the business aspects of insurance, would disappear—the millennium would be reached—if the tort liability system were abolished. They claim that the public is dissatisfied with the tort system and would prefer some sort of no-fault approach. We believe the solution to all of these problems is more complex. We doubt that the public's attitude on such complex issues can

be gauged by the results of over-simplified opinion polls that ask whether a less costly system, free of red tape and delay, would be preferred over the present system. The tort system is based upon the principle of individual responsibility — that a person causing damage to another by careless or intentional conduct should see to it that the loss is in some way compensated. If anything is certain, it is that there has been a re-emphasis in this country of public desire for personal responsibility and accountability.

No public opinion polls are needed to know that the public wants a system that is free from excessive expense, delay and inequity. The tort liability system has been criticized for alleged excesses in each of these areas. Our research was therefore directed to determine the validity of those criticisms and the best means to correct problems which were actually found to exist.

### Delay

It has been claimed that persons involved in motor vehicle accidents must wait many months and even years before compensation is received for the injuries and damages that are suffered. This is attributed to the tort system and the rules of practice and procedure involved in its application.

However, our research of this claim has shown that 94% of auto liability claims are settled without a suit ever being filed and that only one-third of the remaining 6% (2% of the total) are tried to a verdict without being settled in some other way. Therefore most auto liability claims never reach the courts.

It is also demonstrated that these claims that do not reach the courts are settled promptly. Figures from one source show that 68% of claims are settled within 3 months; 81% within 6 months; 86% within 9 months; 89% within 12 months; 93% within 18 months; and only 7% taking more than 18 months to settle. Other sources show similar results.

It must be noted carefully that the delay in the settlement of a liability claim does not

necessarily mean that the claimant will suffer economic hardship. Most Americans receive payments for the economic loss normally associated with automobile accidents (medical and hospital expenses, wage loss, auto physical damage) through first party insurance and benefit programs which are not connected with the operation of the fault system. For these persons promptness of the payment of duplicate benefits from any auto reparation system is relatively unimportant. This is demonstrated by the experience that the American Mutual Insurance Alliance had in experiments with its Guaranteed Benefits program. This is a plan which offered a claimant the option of seeking his normal tort recoveries or taking limited first party benefits in their stead. A reluctance on the part of many of the claimants to give up the right to seek tort recoveries in exchange for the no-fault, no-delay, no-red tape Guaranteed Benefits was found. One of the reasons ascribed for this reluctance was that the claimants were in no hurry to settle their claims since their out-of-pocket losses were covered by other non-auto insurance plans.

What of delay in our courts? When debate as to the merits of the present reparation system began, its critics made statements interpreted as meaning that long delays in the courts affected almost every litigant in almost every jurisdiction throughout the country. The typical claim was that there was an average delay of two and one-half years. The reason for this delay was said to be the auto accident case and the impression was given that if these cases were eliminated congestion would soon disappear.

We set out to determine the validity of these allegations and conducted two surveys to determine the true status of backlog in the country's courts. We found that far from affecting every court and every litigant, delay was limited to a small number of metropolitan jurisdictions. Admittedly this involves a large number of people. Other studies have shown that auto accident cases take up only a small percentage of the judicial time. The real culprit of court delay was found to be an increase in all judicial business and the failure to increase the number of judges

and court facilities to keep apace with population growth. In Manhattan and the Bronx in New York, for example, not one new judgeship was created for 43 years prior to 1968. However, the courts in other areas of large population density have no delay since there are provisions for the creation of a new judgeship based upon an increase in the population.

### Cost

Another of the major criticisms of the present auto reparation system has to do with the cost of its operation. The statement: "I'm paying too much for my auto insurance" is heard quite often. However, we also hear similar statements with regard to the cost of food, housing, services, interest rates, taxes and many other items in the typical family budget. The fact is that inflation has been no stranger to the cost of auto insurance or to the cost of all other consumer goods and services. In fact the cost of many of these items has risen much more sharply than have insurance premiums. There is no question that some persons pay very high insurance rates. However, statistics issued a short time ago showed that the average annual premium paid by motorists in the United States for \$10,000/20,000/5,000 was only \$79.64. It is not uncommon to find persons paying more to park their cars for eight to ten hours a day, five days a week than they pay for auto insurance protection which is in force twenty-four hours a day, seven days a week.

The impact of inflation upon auto insurance rates is more noticeable because the premium is paid once, or possibly twice, a year. Twelve dollars added to a yearly bill which was previously sixty dollars creates more of an impact in the mind of a person paying it than does one dollar added to a monthly bill that was previously five dollars. However, the annual increase is just the same. The fact remains that auto insurance is not the most costly item of expense associated with the operation of a motor vehicle. A study conducted by the Bureau of Public Roads showed that the cost of gasoline and oil (excluding taxes);

garages, parking and tolls; maintenance, accessories, parts and tires; and depreciation each exceeds the cost of insurance. Yet, the cost of these items is spread out through the year and insurance is purchased in one or two installments.

With all the discussion and debate over the high cost of the reparation system, sight is often lost of the fact that the typical automobile insurance premium includes charges for more than liability coverage. Most motorists now carry medical payments, collision and comprehensive, and uninsured motorist protection as well as their normal liability coverages. Yet, the typical premium payer tends to view his automobile insurance bill as an indivisible whole.

Only recently has real consideration been given to the most costly item in the automobile insurance premium statement. Recent testimony before this committee has demonstrated that the cost of coverage for damage to motor vehicles has been increasing at a rate more rapid than the coverage for personal injuries. One recent report indicates that over two-thirds of the typical automobile insurance premium is spent for coverage for physical damage to vehicles. A change in the method of compensation from the present system to some no-fault plan would have no effect on the cost of repairing motor vehicles.

Our studies of the matter of insurance costs have shown that there are two basic reasons for the increase — inflation and rising accident tolls. We believe that any proposals for change or modification of the present system must, of necessity, take these two factors into consideration. Any plan for change which seeks to lower costs by merely redistributing benefits and which does not take these two factors into consideration, will produce only artificial cost reductions which will be dissipated as inflation and accidents continue.

### Inequity

Some claim that the present tort system is inequitable since some persons injured in motor

vehicle accidents receive no compensation. The tort system is not intended to compensate everyone. The system is based upon the principle that one who causes injury to another by careless or intentional conduct should fairly and adequately compensate the injured person. This principle is deeply ingrained into the basic ethic of our civilization. Over the years the application of this principle has been strengthened, rather than limited, as various rules and procedures in the law which prevented its application have been stripped away. The trend has been to extend the principle of liability based upon fault to persons and organizations previously immune rather than to create more immunities. This ability of the tort system to modify in accord with society's needs is one of its most valuable characteristics.

It is true that there are persons who do not recover under the tort system because they are unable to trace their damages to the fault of another. Whether these persons should receive some form of compensation is a question of social policy and not legal policy. However, the nature of this problem must be carefully studied to determine its exact magnitude. We believe that in attempting to solve the problem, to whatever extent it actually does exist, the basic legal rights of those persons who can gain recovery under our present legal system should not be abrogated. If basic legal rights are destroyed in the name of social expediency, all men will eventually be the losers.

### No-Fault Plans and Proposals

In addition to studying the problems which have been attributed to the operation of the present tort liability system, we have also analyzed the proposals which have been proffered as claimed solutions. Some assert that what is needed is drastic change. They claim that the present system cannot be improved sufficiently to alleviate the problems to any significant extent. What

has been proposed are forms of no-fault, first party insurance coverages under which each person injured in an automobile accident would look to his own insurer for benefits. It has been claimed that such no-fault proposals would result in the prompt payment of claims, reduced insurance costs and more equitable treatment of claimants. We have carefully studied these plans and proposals to determine if they would produce the results which their proponents have claimed.

### Speed In Payment

The first advantage claimed of no-fault proposals is speed in the payment of claims. It has been asserted that the adoption of no-fault would result in a system under which all claims would be promptly paid without red tape, similar to the manner in which fire and health insurance claims are paid. While this is what proponents of the plans intend, there is no question that disputes between insurers and insureds would arise, resulting in litigation. Practices and procedures for resolving these disputes are written into two of the most widely publicized plans — Keeton-O'Connell and the American Insurance Association plans. A considerable amount of litigation presently arises under the medical payments provision of the standard auto insurance policy. This is first party, no-fault insurance.

Therefore, even though no-fault plans are designed to reduce delay and speed payment, all claims would not be promptly paid. There is no way to determine whether more claims would be paid promptly under a no-fault plan than under the present system or whether there would be more or less litigation. However, as was previously noted, the majority of claims are now settled promptly and without litigation. In addition, since most Americans presently have non-auto, first party insurance and benefit plans which duplicate the type of benefits offered under a no-fault system, there is a serious question as to whether prompt payment of duplicate benefits is really wanted or needed.

### Claims Of Reduced Cost

One of the most significant claims made for the advantage of adopting a no-fault auto insurance proposal is that the cost of insurance to the public would be reduced.

As lawyers, we do not claim to have the knowledge of insurance actuaries. We must rely upon the studies of others to ascertain the facts of this matter. Proponents of two of the most widely discussed no-fault proposals — the Keeton-O'Connell and American Insurance Association plans — have claimed that insurance costs would be lowered if such plans were adopted. However, other actuaries have studied the same proposals and have asserted that insurance costs would not be reduced; instead even higher insurance costs might result. As lawyers, we do not presume to assert that one set of actuaries is correct or that the other is wrong. All that we can ascertain from this matter is that a serious difference of opinion exists. This alone should be reason for serious reflection. No one knows better than members of the legislative branch that the cost of many projects and proposals, conservatively estimated before implementation, have ballooned all out of proportion when practical application is attempted.

There are observations as to the cost of no-fault we can make which do not require the expertise of an actuary. The first and most obvious is that an inexpensive product is not always a quality product. More specifically, under no-fault plans such as the Keeton-O'Connell and American Insurance Association proposals, the purchase of this coverage is a condition precedent to the registration and operation of a vehicle in a state enacting the plan. However, no provision is made under such plans for the motorist who has adequately protected himself and his family against the losses covered by the plan through other sources of indemnity. There is no way for him to avoid purchasing unneeded coverage. He is forced to pay another premium for duplicate indemnity. The plight of this "over-insured motorist" is further complicated under

some plans. For example, no benefits would be paid under the Keeton-O'Connell proposal if the insured received duplicate benefits from another source. Thus, under such a plan, this insured would be forced to buy coverage he does not need and under which he will be able to make no recovery. Even without such a setoff, it is inconsistent for plans which are offered for the stated purpose of reducing the cost of insurance to force persons to buy protection they do not need.

It should also be noted that the benefits to be paid under no-fault proposals are limited. Typically, benefits are received only for wage loss (up to a stated maximum per month), hospital and medical expenses and, in some cases, a limited death benefit.

Thus, no-fault forces a person to buy types of indemnity coverage that are presently available — if really wanted — from other sources. No-fault would pay only limited benefits for damages arising from auto accidents, while other sources cover a more broad spectrum of losses. Persons covered by the other sources would have no way of escaping the compulsion of buying unneeded, duplicate coverage. In some instances, persons forced to buy unneeded, duplicate coverage would be denied its benefits. Finally, all persons forced to buy this no-fault package would also be forced to give up the right to recover compensation for the pain, discomfort, disability, disfigurement and suffering caused by the fault of another to seal a bargain which many of them did not need but could not avoid. This may turn out to be a cheap product but we do not believe it is a quality product.

### Equity Of Compensation

Finally, it is claimed that a change from the present system to some no-fault scheme would result in equity since all persons injured in motor vehicle accidents would be entitled to the same type of benefits. Such a promise has, at best, superficial appeal. This is the most disturbing feature of the no-fault mystique.

The proponents of such plans realize that to compensate all—the persons who cause accidents and their innocent victims alike—it would be economically impossible to offer compensation similar in scope to that which is now provided under the tort system. Their solution is simple: reduce the scope of the benefits available to innocent traffic victims and pay these reduced benefits to everyone. The innocent victim is denied compensation for his scarring so that he and the drunk who ran into him can have their hospital bills and lost wages reimbursed. The innocent victim is denied compensation for the pain and suffering associated with a broken limb so that he and the reckless teenager who cared more about kissing his girl friend than which side of the road he was on can have their medical expenses paid.

This promise of the no-fault proponents is not for equity, it is for blind equality. While our constitution promises equality before the law, it does not promise equal treatment by the law. We do not jail the robbed with the robber, the assaulted with the assaulter. These plans do not seek to do justice. Rather, they attempt only to create limited funding schemes on the theory that it is too expensive to provide full and just compensation for the innocent victims of auto accidents. They set up the equivalent of boards of adjustment to fix allotments for injury and damage by formulae and percentages with no concern for the determination of responsibility for the loss or adequate compensation.

We do not oppose having insurance protection available for those who are injured through their own fault or through events which cannot be traced to another's fault. Such protection is now available for those who need and want it. We are opposed to any proposal which seeks to establish and fund such a system by restricting and reducing the compensation due to persons who are injured through the carelessness or intentional conduct of others. Such proposals violate the basic sense of fairness and justice which is inherent in our society. For your additional information we have attached Appendices A and B to this statement. They contain the results of the detailed analysis we have made of two of the most discussed no-fault proposals.

## Improvement Of The Present System

Our study has led us to believe that the basic principles which underlie the present automobile accident reparation system are sound. We believe that where problems do exist they can be resolved by modification and change within that system's basic framework. We have expended much time and effort to determine the best method in which this could be accomplished.

The first official statement of our position in this regard was contained in the special report, **JUSTICE IN COURT AFTER THE ACCIDENT** which was issued in January, 1968. It was developed by the Defense Research Institute in conjunction with the International Association of Insurance Counsel, Federation of Insurance Counsel and Association of Insurance Attorneys. A copy of that special report is filed with this statement as Appendix C. In **JUSTICE IN COURT** we stated our belief in the need to preserve and improve the present system and provided a broad blueprint for the areas in which this improvement could be achieved.

Although much time, effort, study and analysis went into the development of **JUSTICE IN COURT**, it was viewed by the four issuing groups as only a first step. Work was immediately begun to take the general principles of **JUSTICE IN COURT** and develop them into specific proposals for reform of the present system. That work culminated in a second special report by the four groups which is entitled **RESPONSIBLE REFORM—A Program To Improve The Liability Reparation System**. A copy is also provided as Appendix D to this statement.

We believe that the proposals contained in **RESPONSIBLE REFORM** would make the present system of automobile accident reparations less costly, more expeditious, more equitable and efficient, all within the framework of a system which is supported by the American public and which has proven its ability to adapt to changing circumstances.

13-100000

### Cost Of System

Several of the proposals found in RESPONSIBLE REFORM are concerned with the cost of the present system. The first of these deals with highway safety.

If a railroad train carrying dangerous chemicals were to explode in the midst of one of our most populated cities causing death to 150 persons and injuries to 14,000 others, the halls of Congress would reverberate with demand for immediate investigation and meaningful action. Yet, in 1968 that was the average daily motor vehicle accident toll. Great numbers of persons have marched in our streets demanding our disengagement from the Vietnam war. Yet, more persons have been killed and injured on our nation's highways than in all our wars. If a drug in common use in this country was found to be responsible for the death of 25,000 of our citizens, it would be summarily ruled off druggists' shelves. Yet, a report by the Department of Transportation shows that 25,000 persons lost their lives during one year in highway accidents caused by the use of alcohol, but laws concerning drinking and driving remain miserably weak. At a time at which our national priorities are being challenged, highway safety programs are being relegated to the back page of news publications, ignored by television and granted only token attention by legislatures.

We believe that, in addition to saving human life and suffering, the only way to significantly reduce the cost of the automobile accident reparation system is to take decisive and meaningful action to curb the number of accidents which occur on our streets and highways. Anything else would be an expedient stop-gap. We believe that much could be done to improve highway safety if greater concentration were placed on the motorist as the cause of accidents. Studies have shown the high involvement of alcohol and drug use as a cause of traffic accidents. The families and friends of the persons killed and injured in those accidents would not be convinced by arguments of no-fault proponents that accident causes are hard to prove. It has also been shown that traffic deaths and injuries could be

reduced by a substantial percentage if only a small number of habitual traffic law violators were ruled off the road. We believe that driving is a privilege and not a right. Therefore in RESPONSIBLE REFORM we have set forth certain proposals to deal with the accident producers. We have proposed legislation for mandatory license revocation and fines for those convicted of operating a vehicle while under the influence of alcohol and drugs; permanent license revocation for habitual traffic law violators; penalties for pedestrians who cause accidents while under the influence of alcohol or drugs; uniform licensing standards for drivers with periodic examination for driving competence; and mandatory use of motor vehicle safety equipment including seat belts and motorcycle safety helmets. We will also lend our support to all meaningful proposals of others to protect the careful motorist from those who abuse their driving privilege. While proponents of no-fault seem to treat all accidents as inevitable and are only concerned with treating the results, we are concerned with the cause itself.

### Fault As A Deterrent

As part of our concern with the driver as an accident producer, we were troubled by the claims of some that a shift to a no-fault auto reparation system would have no effect on highway safety. We were troubled because those who made the claims presented no empirical data. We believed that too many persons are already being killed and injured on our highways and that this subject is so important that decisions regarding it should not be made upon the basis of speculation and conjecture. We sought to study the problem.

Lawrence Lawton, a professional engineer and long-time traffic consultant from Westchester, New York, was commissioned by the Defense Research Institute to direct the research.

In a thoroughly documented study he has shown conclusively that the present fault system applies all possible psychological deterrents to highway accidents. In direct contrast, he concluded that adoption of a no-fault proposal would increase accidents, deaths, injuries and economic loss to the American public.

In his study, **PSYCHOLOGICAL ASPECTS OF THE FAULT SYSTEM AS COMPARED WITH THE NO-FAULT SYSTEM OF AUTOMOBILE INSURANCE**, Mr. Lawton utilizes empirical data gathered from numerous and authoritative psychological studies. He shows that group standards and their exercise have definite impact upon individual behavior of drivers. Under the fault system, the frequency of contact with established group values is optimum. In addition, aggressiveness which is the cause of many accidents is curtailed. Impact of the group standard would be non-existent under the no-fault proposals since pressure of community abhorrence against those who cause accidents would not be brought to bear. Thus, the deterrence of society's standards would be destroyed. Since there is no fault and accidents would be considered a result of random chance under that system, aggression would run rampant through a series of minor accidents. More minor accidents would ultimately result in more major accidents which kill and maim.

Mr. Lawton has also concluded that criminal law is not adequate in itself to curtail highway accidents. He notes that the present system's use of increased auto insurance premiums for bad driving practices would not be an influence under no-fault compensation plans.

Mr. Lawton has arrived at his conclusions on the basis of system analysis and has added his lifetime personal experience to analysis of experimental data. We believe his conclusions are correct. He warns against accepting the opinions of amateurs with regard to this subject before their theories have been adequately tested. The lives of drivers, passengers and pedestrians cannot be gambled on unsupported conjecture, particularly when such expert research indicates that the gamble would be lost by a shift to the

no-fault concept. We have provided a copy of a summary of Mr. Lawton's study as Appendix E to this statement.

Returning to the proposals of **RESPONSIBLE REFORM**, we also believe that the cost of the system, in terms of returning more money to deserving claimants, could be reduced if the abuse of the contingent fee system were checked. At the present time, no workable approach has been fashioned to allow actual legal expenses to be recovered by a successful litigant. Until one is, the contingent fee system provides the only means by which a person who is financially unable to retain counsel on some other basis may have his day in court. For that reason, the contingent fee system has proved beneficial. However, it is subject to misunderstanding and abuse. Those who abuse it are small in number, yet they bring the entire profession, and especially those who are conscientious in the use of the system into disrepute. The proposals found in **RESPONSIBLE REFORM** would make the contingent fee the subject of strict court control. It would also seek to correct some of the misunderstanding about the operation of the contingent fee system by requiring information as to its application to the specific case to be given to the client.

We also put forward proposals relating to the modification of the collateral source rule, control of fraudulent claims and efficient use of the legal effort. Since copies of **RESPONSIBLE REFORM** are available and self-explanatory, I will not discuss them in detail. However, each in their own way, would make the present automobile accident reparation system less costly.

### Speed In Payment

There are three specific proposals found in **RESPONSIBLE REFORM** which seek to expedite the compensation of persons injured in automobile accidents.

The first is a proposal that every automobile liability policy covering any private passenger vehicle, on a non-fleet basis, provide minimum stated first party coverages. These would be for medical and hospital expenses, uninsured motorist protection, income disability and accidental death benefits. They would protect the named insured and members of the family of the named insured residing in his household and would provide similar coverages to guest passengers injured while occupying the insured vehicle who are not afforded such protection by sources collateral to the insured's policy.

We differ in our approach to first party coverage from that proposed in no-fault plans. Although these benefits would be provided on a no-fault basis, they would not affect the rights of the injured person to seek tort compensation from the person causing him injury. In addition, the insured would not be compelled to purchase this coverage if he believed he was adequately protected by his other first party insurance and benefit plans. He would have the right to reject it as it affects himself and resident members of his family. He would not be able to reject this coverage for guest passengers. However, those passengers would be protected by the insured's coverage only if they did not have benefits available from other sources.

We believe that this approach is superior to that offered under a no-fault plan, since it offers protection only to those who need and want it.

RESPONSIBLE REFORM also seeks to alleviate the problem of congestion and delay in the courts. We have proposed that sufficient numbers of judgeships be created to meet the needs of society caused by population growth. Presently judges are shifted from civil to criminal litigation so that persons accused of crimes may have the charges against them disposed of promptly. We believe that the taxpaying, law-abiding citizen should have an equal right to the prompt disposition of civil litigation. We believe that creation of more judgeships will help to alleviate the problem of delay where it presently exists and also will prevent delay from occurring in those metropolitan jurisdictions which are not now troubled with the problem.

RESPONSIBLE REFORM also contains a proposal aimed at easing court congestion and delay in the few metropolitan areas where it now exists. We have proposed that a system of mandatory arbitration of all lawsuits involving claims under \$3000 be adopted in those jurisdictions. Matters are to be disposed of by panels of lawyers without the expense of more court personnel and facilities. This approach is presently working well in Philadelphia, where court delays for claims under \$3000 were reduced from 30 months down to only 30 days, and we believe will effectively reduce delay elsewhere.

We also believe that the insurance industry has been doing much to expedite the payment of personal injury claims through advance payments programs which provide claimants with funds for economic loss before liability is determined. RESPONSIBLE REFORM contains a proposal which would aid insurers in continuing and expanding this effective process.

### Efficiency and Equity Of The System

Several of the proposals found in RESPONSIBLE REFORM are concerned with improving the efficiency and equity of the reparation system. There has been considerable debate over the merit of adopting a system of comparative negligence to replace the rule of contributory negligence. Our proposal is that the determination of whether the rule of contributory negligence should be abandoned is a matter for local determination but that when the rule is to be changed, the present Wisconsin comparative negligence rule and procedure is preferable and should be substituted. We do not believe that the problem has a national solution. What may be workable in one area of the country may not succeed in another.

We have also proposed the modification, addition or elimination of many legal practices and procedures. We believe that many procedures continue to be followed simply because they have been used for a long time. They add nothing to the efficiency or effectiveness of the system.

Other procedures need to be added or brought up to date to make the system as efficient and effective as possible. Again, space limits their discussion in any but this limited manner.

Finally, we have concerned ourselves with the question of pain and suffering. Proponents of no-fault plans tend to imply that there is something immoral about paying an accident victim for anything other than his direct economic loss. If pressed on this point, they generally retreat to the position that it is impractical to pay for general damages since they are hard to measure.

The mere fact that an accident victim cannot produce a signed receipt for all of those damages does not mean that no loss has been incurred — nor that it is so unimportant that it should be disregarded. In actuality, the major portion of the money paid for general damages is not for "pain and suffering," in the literal sense of that term. It is for such items as bodily impairment, disfigurement, temporary or permanent interference with normal activities, the inconvenience and disruption of personal plans, and — in the case of permanent disability — of the immeasurable but nonetheless real diminution of the victim's prospects for business success, marriage and continued happiness.

There are some who propose that the compensation for pain and suffering be completely eliminated. Others propose that formulae be developed so that compensation for pain and suffering can be computed upon a multiple of some item of the claimant's out-of-pocket expense. We believe that a person should continue to receive full compensation for tortiously caused pain and suffering. We believe that a person should not be denied recovery for pain and suffering simply because its severity does not measure up to some artificial quantum. We are convinced that juries have been performing their function of setting compensation for these losses well and that every effort should be explored to aid their task.

21

## Need For Continued Study and Improvement

These then are the proposals of RESPONSIBLE REFORM. We do not suggest that the proposals are a panacea. Other groups including the American Bar Association have studied the problems and proposed programs of reform within the framework of basic legal doctrine. Much found in the report of the ABA Special Committee on Automobile Accident Reparations, which was approved by the American Bar's House of Delegates last August, finds support in RESPONSIBLE REFORM. Likewise, support for the proposals of RESPONSIBLE REFORM is found in the ABA Special Committee report. We believe it is significant that the American Bar and the four groups which sponsored RESPONSIBLE REFORM have agreed on the position that the present system is worth preserving and can be improved within its own framework. It is also significant that each has found proposals which seek to limit the compensation now available to innocent victims of traffic accidents contrary to the public interest.

When we first began our study and analysis of these problems we were certain that, should we find the present system was worth preserving, we as lawyers would be labeled as subjective defenders of the status quo, more interested in preserving our self-interest than the public's. Therefore, we were placed in the unenviable position of being required to either approve proposals which we found to have no merit or having our integrity challenged if we were critical of such proposals. It would be naive to suggest that members of the Bar do not have a financial interest in the present system which provides a means to earn their livelihood. However, it does a great injustice to the members of the Bar to suggest that they are unable to objectively analyze proposals which would greatly affect the public interest. As defense lawyers we could have taken the safe and expedient position of spectators to this controversy. In so doing we

22

would have avoided the possibility of causing antagonism to be created against us by some of our major clients. We could live very well under a no-fault system. Other areas of the law are increasing at a rapid pace and new legislation always results in the need for the services of one skilled in the law. There would surely be litigation under the no-fault plans themselves. However, we believed that it was incumbent upon us as attorneys to resolutely carry out the obligation we embraced with our oath to lay bare flaws of any proposal which would lead to the deprivation of the basic rights of the public — no matter what the personal cost.

We knew that ours was not an easy task since, ironically enough, a system of law was judged and condemned before all the evidence was collected or a defense presented. In support of this statement all we need do is look to the Congressional Record and examine the statements made in support of the resolution calling for the Department of Transportation investigation.

Nevertheless, we have completed our studies, have made our proposals and place our integrity behind them. We will lend our support to the implementation of these proposals and any others which are found similarly sound. We will also re-examine our recommendations in the light of future developments and will add, modify or change proposals if events indicate that the interest of the public merits such action.

We will never in right conscience be able to approve of no-fault schemes which deny innocent victims the right to just compensation for loss caused by another's carelessness and recklessness. No-fault plans are offered as cure-alls for all of the problems, real or imaginary, which are claimed to beset us — just as the medicine show peddlers of the past offered a magic elixir claimed to cure everything from baldness to fallen arches. The "medicine man's" standard pitch was to caution the people not to listen to what their family doctor had to say about the product. He would be against it because of the fear of being put out of business by the wonder tonic.

We believe that no-fault is something that the public does not need and, in possession of all the evidence, would not want. We do not mean to impugn the motives of those who propose such plans. We are convinced that they truly believe in their merit. Although they have spent much time and effort in developing these proposals, pride of authorship sometimes tends to dull objectivity. On the other hand, lawyers did not create the principles of individual responsibility and accountability — they arose from a time more ancient and a power greater than mortal man. However, part of the stewardship for maintaining these proposals has been entrusted to lawyers and we as members of the legal profession intend to fulfill that trust by protecting, perfecting and maintaining the principles of individual responsibility and accountability.

## EXHIBIT C

# An Analysis And Critique of

AN AUTOMOBILE INSURANCE PROPOSAL  
PREPARED FOR STUDY AND COMMENT BY THE  
AMERICAN INSURANCE ASSOCIATION



*To Increase the Professional Skill and  
Enlarge the Knowledge of Defense Lawyers*

## DRI STATEMENT OF PURPOSE

The purpose or purposes for which said corporation is organized shall be to promote improvements in the administration of justice and enhance the service of the legal profession to the public; to support and work for the improvement of the adversary system of jurisprudence in the operation of the courts; to encourage the prompt, fair and just disposition of tort claims; to enhance the knowledge and improve the skills of defense lawyers; to advance the equitable and expeditious handling of disputes arising under all forms of insurance and surety contracts; to work for the elimination of court congestion and delays in civil litigation; to cooperate with programs of public education directed toward highway safety and the reduction of losses and costs resulting from highway and other casualties; and to carry on other related and similar activities in the public interest.

A Special Report By

THE DEFENSE RESEARCH INSTITUTE, INC.

*(A Non-Profit, Non-Stock Corporation)*

1212 W. Wisconsin Avenue

•

Milwaukee, Wisconsin 53233

# Contents

	<i>Page</i>
<b>FOREWORD</b> .....	<b>3</b>
<b>SYNOPSIS OF THE CRITIQUE</b> .....	<b>5</b>
<b>CRITIQUE</b> .....	<b>6</b>
<b>Elimination Of Tort-Fault</b> .....	<b>6</b>
<b>Compulsory Accident And Health Insurance</b> .....	<b>7</b>
<b>Limitations On Recovery</b> .....	<b>7</b>
<b>Work Loss</b> .....	<b>7</b>
<b>Loss Of Earning Capacity</b> .....	<b>8</b>
<b>Elimination Of Pain And Suffering Recovery</b> .....	<b>8</b>
<b>Reduced Disability Benefits</b> .....	<b>9</b>
<b>Property Damage Limitation</b> .....	<b>10</b>
<b>Misunderstanding As To Need For Coverage</b> .....	<b>10</b>
<b>Inequity In A Deductible</b> .....	<b>10</b>
<b>Elimination Of Individual Responsibility</b> .....	<b>11</b>
<b>Claims Of Reduced Cost</b> .....	<b>11</b>
<b>Will Cost Reductions Materialize?</b> .....	<b>11</b>
<b>Who Would Pay Highest Rates?</b> .....	<b>13</b>
<b>Possible Reduction Of Auto Litigation</b> .....	<b>14</b>
<b>Plan As Source Of Litigation</b> .....	<b>14</b>
<b>Possible Increase For Products Suits</b> .....	<b>15</b>
<b>The Plan's Questionable Constitutionality</b> .....	<b>16</b>
<b>Due Process</b> .....	<b>16</b>
<b>Equal Protection</b> .....	<b>17</b>
<b>Workmen's Compensation Analogy</b> .....	<b>18</b>
<b>Complications After Enactment</b> .....	<b>19</b>
<b>Conclusion</b> .....	<b>20</b>
<b>APPENDIX</b> .....	<b>21</b>
<b>Analysis Of The Plan's Elements</b> .....	<b>21</b>
<b>Comparison Of AIA And Keeton-O'Connell Plans</b> .....	<b>22</b>

## Foreword

**I**N OUR civilized society, we recognize the right of each individual to seek redress in a court of law, and according to the mores of his society, for the wrongs done to his person or property. This process has been thoughtfully and carefully developed for the common good and to serve the best interests of each individual.

The end of our system of jurisprudence is justice, as complete and tailored to the rights of each litigant and the needs of each lawsuit as can be developed by man. The greatness of our system lies in the fact that the results of each case determine whether justice was truly done. While all men are entitled to equal justice under the law, it is recognized that the facts and circumstances of particular cases differ so greatly that no abstract rule can be established which will automatically provide justice in every case and for each litigant.

However, society has created general rules of conduct so that, based upon the circumstances of a particular situation, it can be determined whether someone's rights were transgressed. We believe that men who enter into a legal contract should be bound to carry out its terms. We oblige a man who damages property to compensate its owner. We believe that one who is injured through the carelessness of another should be compensated by the person who was responsible for causing the injury. All of these concepts and many more stem from society's deep concern with individual responsibility. The principle that the rights of citizenship carry corresponding responsibilities is securely woven into the fabric of our society.

Of late there have been claims by some that these principles of individual responsibility, at least as they relate to reparations for injuries sustained in auto accidents, are archaic and no longer have a valid place in our society. Concern is expressed for persons who are injured in auto accidents and receive no compensation from the auto reparations system because their injuries are not traceable to the carelessness of any third person. Plans are pro-

posed to absolve the careless motorist of any responsibility to the person he injures and to require all to protect themselves from this type of loss through the purchase of limited protection insurance.

While it must be admitted that some problems do exist in the operation of the present auto accident reparations system, it is clear that the no-fault plans that have been proposed do not seek to meet and correct them so that our system of justice will be improved and preserved. Rather, they attempt only to create limited funding schemes on the theory that it is too expensive to provide full and just compensation for the innocent victims of auto accidents. These plans do not seek to do justice but set up the equivalent of boards of adjustment to fix allotments for injury and damage by formula and percentage with no concern for the determination of responsibility for the loss or adequate compensation.\*

It is said that the needs of those who recover nothing from the present system due to an absence of provable fault are not met by our present system of justice. But this argument confuses justice with the concern that all men have for their unfortunate neighbors. There is serious question as to whether this problem is as great as claimed. But if it is, the solution should lie outside the framework of the law, the end of which is justice and not charity. If justice is destroyed in the name of charity, all men will eventually be the losers.

The Defense Research Institute is fully committed to the preservation of individual responsibility and to the preservation of the right of the innocent victim of another's carelessness to recover just compensation from the person who caused that loss. For this reason this Special Report was prepared analyzing the no-fault auto compensation plan offered for study and comment by the American Insurance Association and entitled "The Complete Personal Protection Automobile Insurance Plan." We believe it necessary to give the

\*See Davitt, *The Elements Of Law*, at 243 (1959)

public, Congress, state legislatures, the bench, the bar, the media and all others concerned with this subject a detailed analysis of the plan so that they may place it in its proper perspective. Most of the noted shortcomings in the plan are similar to those found in other no-fault proposals. Their concern is to provide some limited compensation to all who are injured in auto accidents, even the careless and reckless driver, and to do so at the lowest possible cost. To do so they deprive the innocent victims of these accidents of the full measure of compensation they are entitled

to under our present system of justice. DRI is opposed to all plans that provide for the settlement of disputes between individuals on a no-fault basis since they are not in the public interest. Nevertheless, DRI is mindful of the fact that the AIA study may be helpful in the development of proposals that can better serve the public without impairing the basic concept of fault.

Defense Research Institute  
February 1, 1969

## Synopsis Of The Critique

**I**N THE following pages the plan offered for study and comment by the American Insurance Association, entitled "The Complete Personal Protection Automobile Insurance Plan," as set forth in its *Report Of Special Committee To Study And Evaluate The Keeton-O'Connell Basic Protection Plan And Automobile Accident Reparations*, dated October 21, 1968 is analyzed. Despite the apparent good motives of AIA in offering the plan it is concluded that, for the following reasons, the plan should not be adopted:

	<i>Page</i>
1. The entire fabric of the tort system is constructed around the principle that one who causes injury to another should fairly and adequately compensate him for the injury. The plan eliminates this responsibility and treats the careless motorist as the equal of the person injured by his careless conduct .....	6
2. The plan would force motorists to purchase insurance to protect themselves against loss caused by the careless conduct of others. For many this new coverage would unnecessarily duplicate existing coverages .....	7
3. The plan would sacrifice basic legal principles in the interest of a competitive advantage in the market place .....	7
4. The plan's limitation on recovery for work loss clearly discriminates against 30% of the population .....	8
5. The plan would eliminate recovery for impairment of earning capacity which can be a substantial loss to many injured workers .....	8
6. The plan would eliminate all recovery for pain, suffering and inconvenience suffered by innocent victims of traffic accidents caused by careless drivers .....	8
7. The plan provides only limited benefits for disability and disfigurement based upon an arbitrary formula, not the nature and extent of the injury .....	9
8. The plan would force owners of vehicles to pay the cost of repairing automobile damage caused by carelessness of others .....	10
9. The promised reduction in insurance costs under the plan is dubious and may not materialize .....	11
10. The rating structure of the plan may result in higher premiums for careful drivers and lower rates for those who cause accidents .....	13
11. The areas of potential controversy between the insurer and insured are greatly increased and are likely to cause increased litigation. In addition, other civil litigation may increase if the plan were enacted .....	14
12. Once enacted, the plan is likely to be found unconstitutional, based on violation of the due process and equal protection clauses .....	16
13. The plan is far from being a "complete" or "personal" protection plan .....	20

## An Analysis And Critique\*

### ELIMINATION OF TORT-FAULT

Under the American Insurance Association (hereafter referred to as AIA) proposal, the fault of a person causing an automobile accident would not be considered to determine his benefits. This means that the careless or inattentive driver, the speeder, the reckless or drunken driver would be treated as the equal of the innocent accident victim who is injured as the result of such conduct.

One of the stated "basic principles" in the development of the plan was:

Fault is not a proper factor to determine reimbursement for motor vehicle accident injuries.<sup>1</sup>

The proposal does not set forth the reasons which led to the adoption of that principle. Its validity is clearly open to serious debate, especially since so much emphasis has been placed on law, order and individual responsibility in recent months.

Proponents of "no-fault" plans contend that the fault concept has been destroyed because many tortfeasors escape responsibility for the injury and damage they cause. The widespread use of liability insurance, they claim, has eroded the concept of individual responsibility upon which the tort-fault system is based. They also claim that the fault system has little meaning since individuals may purchase first party insurance which will return benefits despite the negligence of the insured and no matter how much that negligence may have caused the damages and injuries he suffered.

Persons who raise such arguments fail to understand that the true purpose of the tort-fault system is not to punish tortfeasors. The entire fabric of the tort system is constructed around the premise that

one who causes injury to another should fairly and adequately compensate him for that injury.<sup>2</sup> Once liability is determined, it is the tortfeasor's obligation to see that the compensation is paid, either from his own assets, liability insurance, or other sources. The fact that the vast majority of motorists have purchased liability insurance proves that the general public has assumed this obligation.

Those who claim that the widespread use of liability insurance destroys the concept of individual responsibility fail to recognize some significant facts. In many automobile personal injury actions, there is always the possibility that the final verdict will exceed the limits of insurance coverage with the result that the insured will be personally liable for the excess. Even with adequate liability insurance coverage, it is foolish to say that the insured is not concerned about the possibility of a negligence action against him. Once involved in such a lawsuit, he will suffer personal inconvenience and possible financial loss due to his attendance at conferences with his counsel, attendance at depositions and trial. Liability insurance does not extinguish personal responsibility; if it did, there would be no valid justification for merit rating in computing auto insurance premiums.

It is true that the tort-fault system does not concern itself with persons who are injured through their own carelessness. Whether persons so injured should receive compensation is a social question, not a legal one.

The great percentage of the population is covered by first party accident and health insurance, hospital, and medical plans, and wage continuation programs. Such individuals have recognized the need for protection from the contingencies of sickness and injury which are not caused by anyone except possibly themselves.

Proponents of no-fault plans have recognized that it would be too costly to have one plan which would retain all features of the present system for innocent traffic victims, while offering added benefits to

\*The facts concerning the American Insurance Association plan upon which this critique is based were drawn from the report offered for study and comment by AIA as noted in footnote 1.

<sup>1</sup>American Insurance Association, *Report of Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations*, at 5 (Oct 1968). The House of Delegates of the American Bar Association voted disapproval of the AIA plan at its mid-winter meeting held in Chicago January 27, 1969.

<sup>2</sup>See *Exodus* 21:5, 18 (RSV)

those who could not recover because of their own fault. Therefore, they declare fault meaningless and deny the innocent traffic victim his full, fair and adequate compensation so that all may recover limited benefits.

If fault is not a proper factor in automobile accident reparations, why should fault be acceptable in any other tort situation? If a motorist should not be held liable for his momentary inadvertence why should a surgeon be held liable if his scalpel slips and injures a patient? Why should the distracted motorist who runs a stop light be exempt from tort liability when automobile manufacturers will be held liable if a workman's temporary distraction produces a faulty product that causes injury?

Simply stated, if the "basic principle" is true and motorists who injure others should not be held responsible for fair and adequate compensation, then the concept of fault should be discarded totally and each person should be required to protect himself not only from the consequences of his own conduct but from that of all others. It is clear that today's Americans are seeking a re-emphasis of individual responsibility, not its further erosion.

#### COMPULSORY ACCIDENT AND HEALTH INSURANCE

The AIA plan is compulsory accident and disability insurance for motorists, nothing more. Benefits payable under the plan (medical and hospital expenses, work loss and disability payments — per schedule) are available under present forms of non-auto, first party insurance coverages. If the plan were enacted, it would produce a unique situation. Motorists would be the only class in the United States who would be *forced* to purchase insurance to protect *themselves* from accidental injury.

Since most Americans have forms of non-auto insurance which provides for exactly the same losses that AIA's plan would cover, these persons would be *forced* to buy insurance they don't need.<sup>3</sup> If statistics on the amount of this non-auto, first party

<sup>3</sup>Statistics show that 85% of the American public have non-auto medical and hospital benefits available and that over 70% of the work force have wage continuation benefits available. Andre Maisonsieppe, A.M.I.A. vice-president, speech to Independent Mutual Insurance Agents of New York (Sept 1968)

insurance in effect are correct, nearly three quarters of the public would be *forced* to buy unneeded coverage and, as part of the bargain, to give up the right to recover for losses not covered by either their present insurance or the AIA plan.

One may wonder why AIA affirms an auto compensation plan which is, in effect, compulsory accident and disability insurance. One insurance executive has alleged that marketing factors are a prime reason.<sup>4</sup> He stated:

The AIA automobile insurance plan, being in itself simply a form of compulsory accident and disability insurance, lends itself from a marketing and procedural standpoint to a group approach. It seems fair to suggest that one motive strongly influencing members of the AIA Executive Committee, which are the giants in their own organization, is the marketing potential for tying their present group writings directly into the new automobile insurance system they propose.<sup>5</sup>

The AIA plan does not provide for a collateral source setoff, as in the Keeton-O'Connell plan, and the stated reason for not doing so is the belief that "the cost of motor vehicle accidents should be borne by motorists."<sup>6</sup> However, companies that will write the new auto plan and also continue to write other non-auto, first party accident and disability coverages will, in effect, be getting two premiums for the same coverage.

It should be noted that problems can arise in the enforcement of a compulsory insurance law. Since the purchase of its insurance would be a prerequisite to operating a motor vehicle in a state enacting the plan, some machinery would have to be set up to recover the drivers' licenses, certificates of registration and vehicle licenses of those motorists who allow their insurance to lapse.

#### LIMITATIONS ON RECOVERY

##### WORK LOSS

Under the present system, the innocent victim of an auto accident may recover full

<sup>4</sup>Kemper Insurance Reports, *Automobile Insurance: The Politics Of Surrender*, at 10 (Nov 1968); see also, *Insurance Today*, *The Journal of Commerce* (Nov 7, 1968)

<sup>5</sup>*Ibid*

<sup>6</sup>Note 1 *supra*

damages, including any wage loss he may suffer, present and future. The AIA plan places a ceiling on the recovery for this type of loss. A 15 percent "tax deduction" is subtracted from any amount payable for this benefit and the maximum recovery allowed is \$750 a month (\$9000 a year). The 15 percent deduction means that the most an injured person will be able to recover is 85 percent of his lost wages.

The \$750 a month restriction clearly discriminates against those who have earnings over \$9000 a year which includes over 30% of the population.<sup>7</sup> If inflationary pressures continue and the average wage and salary continue to grow, more and more people would not be fully compensated for wage loss due to the arbitrary limitation. It is easy to see why a limitation was set. One has to be fixed in any plan if initial cost figures are to be projected as lower than present rates.

#### LOSS OF EARNING CAPACITY

Under the present system, loss of earning capacity is a proper element of a personal injury claim. However, under the AIA plan, it appears that claims for loss of earning capacity will not be allowed since, "work loss" is defined as:

... loss of income from work (for example wages) and expenses reasonably incurred for services in lieu of those the injured person would have performed without income.<sup>8</sup>

If the plan intends to eliminate this element of recovery, a significant portion of the recoverable losses of some of the most seriously injured persons will be destroyed. For example, a college student could suffer a severe brain injury in an auto accident and have no wage loss because he is then unemployed. His brain injury could cripple him for life, making it impossible for him to accept employment but he would receive no payment for this calamity, except for a permanent disability payment computed as 50% of his medical and hospital bills. Under the present system, his potential for future earnings would be considered when determining damages.

As another example, a factory worker could be injured in an automobile acci-

dent which would force him to miss one month's work. He would receive his wage loss (less 15% and up to \$750) and his hospital and medical expenses. Although he could return to his prior job, his disability might disqualify him for better jobs at higher pay. Under the present system, his potential for assuming better positions prior to the accident would be a proper consideration in determining his damages. Under the AIA plan, his wage loss benefits would end once he returns to his former job and he would receive no payment although his disability made it impossible for him to better himself, except for a benefit computed at or up to 50% of his medical and hospital bills.

The failure of the AIA plan to consider any compensation for loss of earning capacity is another example of the fact that it is not a *complete* form of personal protection as its title claims.

#### ELIMINATION OF PAIN AND SUFFERING RECOVERY

The AIA plan would provide no recovery for the pain, suffering and inconvenience experienced by a person injured in an automobile accident. The reason is another of the "basic principles" used in developing the plan:

Pain and suffering are not susceptible of objective measurement and should not be included in a reparations system.<sup>9</sup>

It is not denied that injured persons endure pain, suffering and inconvenience but the injured would have to bear their burden because these elements of damage can't be computerized to provide a hard, fast formula applicable in all cases and regardless of individual human differences. The plan finds it easier to compute a payment based upon 50 percent of medical and hospital specials than to treat each claimant as an individual with pain and injuries distinct from other individuals — pain and suffering just don't compute so they are eliminated.

Recoveries for pain and suffering are presently allowed. In fact, a substantial portion of many personal injury awards is made up of compensation for that element of damages. Recognition is now made of the fact that persons may be forced to en-

<sup>7</sup>Statistical Abstract of the United States at 326 (1968 ed)

<sup>8</sup>Note 1 *supra* at 5

<sup>9</sup>*Id* at 3

dures pain, suffering and inconvenience through no fault of their own and that, but for the carelessness of another individual, they would not have had to undergo that ordeal. The basic principle applies that a person who causes injury to another should be responsible for seeing to it that the injured person is fairly and adequately compensated. Anguish and inconvenience are now considered as much a part of that injury as the lacerated skin, torn muscles and broken bones. The vast sums our population spends on drugs, medical research, hospitals and doctors illustrates our dread of pain and shows that we will go to great expense to prevent or relieve it.

Also recognized is the concept that pain and suffering include much more than the actual physical hurt produced by the injury. A person with a broken limb is forced to endure discomfort and inconvenience as long as, and sometimes after, the bones mend and the actual physical hurt ceases. A person whose face is so scarred that plastic surgery can never fully succeed will suffer anguish and humiliation for the rest of his life. A young woman whose injury prevents her from ever bearing a child may suffer emotional anguish long after her wounds have ceased causing her physical pain.

The present system does not pretend to set an exact value on a quantum of pain so it can be multiplied by the claimant's total time exposed to that experience. No two human beings are alike, and it is logical to say that no two human beings experience pain to the same degree. Pain and suffering are not commodities available in the marketplace. They have no going hourly rate as do the wages of workmen.

Today, the trier of fact is given the responsibility to award the plaintiff a sum thought reasonable for the total experience of pain and suffering he has undergone.

Insurance statistics show that about 98 percent of all auto claims are settled and that only 2 percent are ever determined through a full trial.<sup>10</sup> Since so many cases are settled involving claims for pain and suffering, it indeed seems strange to suggest that a reasonable settlement for pain and suffering cannot be reached. This is exactly what the companies that write auto

insurance have been doing with claimants for many years and are still doing today.

That settlements and verdicts which include sums for pain and suffering do not have a precise mathematical formula is to the credit of the present system. A jury considers all the evidence presented to determine the plaintiff's injury and the pain, suffering and inconvenience he was forced to undergo. The greatness of the system is that it allows individuals to be treated as individuals and allows human beings to assess the injury suffered by human beings. The fact that the pain and suffering caused one individual by another does not work into a computer program should not be allowed to determine whether an injured person will be denied his right to recover for that damage — unless a computer can also prevent one from ever suffering pain again. Forms of first party coverages are no substitute for compensation for pain and suffering.

#### REDUCED DISABILITY BENEFITS

The AIA plan does recognize that, in some cases, a person may be partially or totally disabled by an auto accident and does attempt to provide a small benefit as "compensation" for that disability.

Under the present system, the trier of fact considers all the evidence presented on the issue of the plaintiff's disability and determines a reasonable award for that damage. Under the AIA plan the only individual consideration given to a disabled claimant will be the total of his medical and hospital expenses. This amount will be multiplied by a fixed figure up to fifty percent. The extent and nature of the disability will not be considered. In fact, the individual himself will not be considered. All that will matter are figures and decimal points on the hospital and doctor bills.

For example, a young secretary who lost a leg in an auto accident will be told: "We paid your medical and hospital expenses and your lost wages while you were away from work. Your wheel chair will fit behind a typewriter. But, since you are permanently disabled, we'll also give you an extra 50% of your medical and hospital bills. This will make up for the fact that you can't swim or dance, or engage in any of the other activities young girls of your age enjoy."

<sup>10</sup>*Fact vs. Fiction*, at 4, National Association of Independent Insurers (1968)

Such a plan will also "care for" the young father who loses his arms in an auto accident. Under its rehabilitation program he may even be fitted with artificial arms so that he can again perform the tasks expected by his employer. But, will an additional 50% of the value of medical and hospital bills compensate him for his inability to teach his son to throw a football? Will it provide just compensation for the impairment of his ability to fully enjoy life?

The protection of the AIA plan is not as complete as the title suggests. It does not consider the fact that a person suffering from a severe, permanent disability may have relatively small hospital bills and medical expenses and that this would reduce the amount of the award. It is based on an easily calculated formula which treats each claimant as a computer entry rather than an individual.

#### PROPERTY DAMAGE LIMITATION

The AIA plan presents a unique approach to liability for property damage. Today's motorist is liable for damage he may cause to the property of others because of negligence. Insurance coverage for such property damage is a standard part of automobile policies. In addition, first party insurance coverages are provided to cover loss to one's own auto which would otherwise go uncompensated.

Under the plan, owners of property other than motor vehicles would be treated as additional insureds under a motorist's policy. If, for example, a driver left the road and struck and damaged a person's home, the driver's insurer would pay the homeowner for that damage. However, if the driver would strike a car parked in front of the owner's home, the plan gives the driver and his insurer immunity from any liability. All vehicle owners in a state enacting the plan would assume the risk of damage to their own vehicles. Thus, even if the owner could conclusively prove that his car was properly parked and that the damage was caused by another's negligence, he would have no right to be reimbursed.

Such a change in the rules of liability might be welcomed by parking lot operators and the owners of vehicles that are one step away from the junk yard. However, it would be unjust and inequitable

for scores of responsible motorists who use every means to avoid damaging the property of others and to assure that their own vehicles are in good condition.

AIA indicates that, under their plan, all insurers would be required to offer a form of "physical damage coverage" (presumably similar to present forms of collision and comprehensive coverages). It should be noted that this coverage would be optional and that an additional premium would be charged to those who wished it.

#### *Misunderstanding As To Need For Coverage*

If the plan were enacted, it is questionable whether motorists would be sufficiently informed about its features to recognize the need to acquire the additional physical damage coverage. Most motorists do not consider their auto insurance as a group of separate coverages for which separate premiums are paid. They tend to view all coverages as an indivisible whole for which a single premium is charged. It is reasonable that many would view the claimed 45 percent premium savings under its new plan as a saving that would be realized against the price now paid for a complete auto insurance package — including collision and comprehensive coverages. This view is strengthened by newspaper over-emphasis on the claim of 45 percent cost savings. Few have mentioned that only 19 percent savings are claimed if physical damage coverage is also added. Expecting a 45 percent saving, motorists might mistakenly purchase only the bare bones AIA coverage and not the additional physical damage option. Thus they would be exposed to severe financial loss in case of subsequent damage to their autos.

#### *Inequity In A Deductible*

One must also consider the fact that the plan's physical damage coverage would certainly have some form of a deductible. The most common deductibles with present collision coverages are \$50 or \$100. However, under the present system, a vehicle owner may recover the \$50 or \$100 he paid for the cost of repair, if the damage was caused by another's negligence.

This would not be so under the AIA plan. Those causing property damage to the vehicles of others would be immune from liability. Up to the limit of the de-

ductible, the vehicle owners would be self-insurers for damage caused by other drivers. Therefore, if a person parked his car in front of his home and it was struck by a vehicle operated by a drunk, the owner would have to pay the first \$50 or \$100 of repair bills. If he failed to purchase physical damage coverage he would have to pay the full repair bill himself. The drunk would have no liability whatsoever.

#### *Elimination Of Individual Responsibility*

It should be clear that elimination of tort liability for damage caused to the automobiles of others may seriously affect the attitude of some motorists toward traffic safety. Since all motorists would be responsible for damage to their own vehicles and tort liability would be completely eliminated, persons driving loaned vehicles or very old autos of minimal value would have no incentive to avoid the slight scrapes and bumps with other vehicles that may occur while driving on congested city streets or while parking. It may give some motorists an opportunity to vent their anger on others whose driving habits they don't condone. For example, the driver of an old, dilapidated auto, cut off at a stop sign by an expensive late-model foreign car, could catch up with his antagonist at the next stop sign and give him a good jolt with his bumper. If the new car suffered property damage as a result of the incident or if one of its occupants suffered personal injury, the driver of the old auto would not have to pay since all tort liability is eliminated.

#### CLAIMS OF REDUCED COST

It is important to study the details of the AIA proposal to adequately analyze its claimed savings in rates. In the brochure which describes the no-fault plan, the following statement is made concerning its cost saving estimates:

It should be noted that the indicated savings are amounts by which premium for private passenger automobile insurance could be fully reduced from *adequate* present rates.<sup>11</sup> (Emphasis added)

Statements made by AIA officials during recent Congressional hearings on the Department of Transportation study of auto reparations indicate that they do not con-

sider present rates to be adequate.<sup>12</sup> Therefore, it is important to know how great an increase in present rates would be needed to make them *adequate*.

An indication of how much of an increase would be needed came at the press conference called by AIA to announce its new plan. Under questioning by reporters, an AIA official said that today's rates are 10 to 15 percent inadequate in most states.<sup>13</sup> This places the claims of cost savings in a different perspective. For example, if a person is presently paying \$100 for his auto insurance an *adequate* rate would be between \$110 and \$115. Under AIA's new plan any rate reduction would be from such increased premium figures. In this example, if a 19% saving were in fact realized, the policyholder who is now paying \$100 for his insurance would end up paying between \$89.10 and \$93.15 for his insurance. His actual savings over his present rates would be between 10.0 and 6.85 percent. It should be noted that the average American motorist is presently paying much less than \$100 a year for his insurance.<sup>14</sup> Therefore, savings for the average American motorist, if the plan were enacted and actually produced savings, would be very very small.

#### WILL COST REDUCTIONS MATERIALIZE?

Since the AIA plan is not in effect, opinions as to the cost of that plan once it is in operation are at best estimates. Actuarial studies must be projected on present data. It is of paramount importance to consider the plan's cost study to determine its validity as well as the assumptions accepted by them to establish its cost analysis.

An actuarial analysis of the AIA study revealed the following:<sup>15</sup>

1. In costing out its compulsory accident and disability plan, the AIA

<sup>12</sup>Hearings Before the Commerce Subcom of the Senate Com on Commerce on SJ Res 129 at 120-63 (Mar 14, 1968)

<sup>13</sup>Wise, *Automobile Insurance: Which Road Toward Reform?* American Mutual Insurance Alliance Pamphlet (Nov 20, 1968)

<sup>14</sup>U.S. News & World Report (July 9, 1968)

<sup>15</sup>Note 13 *supra*; we have been advised that the National Association of Independent Insurers has also been studying the cost figures used to develop the AIA plan and that NAI's study, to date, indicates that the plan would produce no savings in average premium charges. If anything, the plan would probably increase premiums.

<sup>11</sup>Note 1 *supra* at 8

study committee assumed that only 31 percent of persons injured in auto accidents would be entitled to payment for wage losses. However, the AIA's own cost survey shows that more than 43 percent of traffic accident victims actually incur wage losses.

2. The AIA's cost estimates make no allowance for future income losses to survivors in auto accidents where the breadwinner is killed. In costing out their plan, they list only the economic losses incurred up to the time of death. Our actuaries estimate that, on a conservative basis, this error alone will add more than 16 percent to the economic losses under the AIA proposal.
3. The AIA's cost estimates make no provision for wage losses in cases that result in partial disability — that is, where a worker had to take a lower-paying job because of an impairment suffered in an auto accident.
4. The AIA's cost estimates arbitrarily list all cases of permanent and total disability as the equivalent of 99 weeks of disability — less than 2 years. This arbitrary assumption has the effect of grossly understating the actual economic losses that would be incurred in such cases.
5. The AIA's cost estimates do not include any provision for payment of cases that fall into the assigned-case plan. Yet we know that such cases will add substantially to the financial cost of their proposal, especially in states where there is heavy out-of-state traffic.

It should be clear that the cost estimates are subject to serious question and that the plan may well turn out to be more expensive than presently projected.

There are other unanswered questions which must be considered, the answers to which may also adversely affect hopes of cost savings:

1. The plan contemplates paying all persons injured in auto accidents. This includes those who do not recover because of their contributory negligence, those involved in one-car accidents and those who have claims that are so small that they

do not care to prosecute them. Is sufficient data available to accurately determine the impact that the payment of all these additional claims will have upon the cost?

2. Will the elimination of the fault concept adversely affect highway safety programs, with the result that there will be more accidents and claims?
3. Since there is no deductible on the medical and hospital expense portion of the plan, will many persons with very minor injuries which do not usually require medical attention seek out medical services?
4. Will many persons attempt to pad their claims by obtaining excessive or unnecessary medical and hospital treatment or by unnecessarily remaining away from work? What effect will the limitation of the plan to out-of-pocket benefits have as an inducement to padding of claims?
5. If the AIA plan follows the proposal of the Keeton-O'Connell plan to provide benefits for all injuries arising out of the ownership, maintenance or use of motor vehicles, would a problem with fraudulent claims arise? Would persons injured in non-auto accidents claim that they suffered injury while repairing or servicing their vehicles to gain benefits under the plan? Would a substantial number of these unwitnessed "auto" accidents affect the projected cost?
6. How many disputes between insurers and their insureds over benefits under the plan will result in court suits? Would a substantial number of these suits increase the cost?
7. Would a larger claims department clerical staff be necessary to handle the periodic payments method of the plan and the necessary paperwork this would entail? What changes in the claims staff personnel would be needed to investigate whether the insured had completed medical and hospital treatment, was able to return to work, etc.? What effect will these items have upon costs?
8. What will it cost insurers to train personnel, establish new procedures,

issue new policies, etc., for the new plan? Will this cost be passed on to policyholders?

9. The plan contemplates payments for services the injured person would have performed had he not been injured. This would pay for items such as hiring a housekeeper to do housework for an injured housewife. How many claimants will "milk" this benefit by hiring outside help to do work they actually could perform themselves or by keeping a person on to do this work long after the disability has ceased? What effect will a substantial number of these situations have upon costs?
10. AIA has indicated that the size of the benefits payable for wage loss or disability and disfigurement could be increased if the legislature of a state enacting the plan would so desire. However, it should be clear that if they were to be increased, the size of the premiums paid would also increase. Is sufficient data available so that the impact of any increases in these benefits on the plan's cost could be adequately evaluated?

While the product's cost is an important factor, a consumer is also concerned with what he gets for his money. A person might choose one pair of shoes over another even though the cost is 20 percent more, simply because he knows the cheaper pair will fall apart quickly. A cheap product is not always a "bargain."

To the innocent victim of an automobile accident the AIA plan would surely not be a bargain even if it could be sold for 19% or 45% less than present insurance. He would be required to give up too much.

#### WHO WOULD PAY HIGHEST RATES?

In evaluating the AIA proposal a significant factor is the possibility of changed rating structures. That is, who would pay the highest rates under the plan and who would pay the lowest?

Under the present system the insurer pays damages if its insured is found legally liable for the injuries and damages caused by the auto accident. Therefore, the insurance rates charged to insureds, under the

present system reflect the insured's potential for causing injury and damages to others. The driver who has the highest accident and traffic violation record and greatest potential for causing injury and damage pays the highest rate. The driver with no record of accidents and traffic violations and with the lowest potential for causing injury and damage pays the lowest rate. Drivers whose records fall between these poles have their rates adjusted accordingly. Since the present system operates on a third party, liability insurance contract, this type of rating structure is equitable.

Unlike the present system, the AIA proposal envisions a first party contract which, as to the exposure of the insurer, is more similar to life or accident and health insurance. In structuring rates under a first party system, the insurer is concerned solely with the possibility of loss to its insured and not with the losses the insured may cause others. For example, if two persons apply for an identical life insurance policy and the only difference between them is that one has a severe heart condition while the other is in perfect health, the one with heart trouble pays a higher premium because he is the greater risk. Similarly, if two persons take out the same medical and hospital insurance plan, but one covers only himself while the other also covers his wife and children, the person with the family coverage pays more. Again, the insurer's exposure is greater in one case than the other and justifies a higher rate.

Logically, the AIA plan must have a similar rating structure. Thus, the person expected to collect the most in case of an accident would have to be charged a higher rate than the person who would collect little. Therefore, the owner of a station wagon who has a large family would pay higher rates than an unemployed student with a two-seat sports car. If there were a collision between these two vehicles, the insurer covering the station wagon would have the potential of a claim for work loss and disability by the owner and, in addition, claims for medical and hospital expenses by all in the car. The insurer of the sports car would face a possible claim for only medical and hospital expenses by the driver — and possibly a claim by one other passenger.

In this situation the fact that the driver of the sports car has a bad traffic violation

record would have less impact on rates under the AIA plan than under the present system. With fault eliminated, the sports car driver could violate a red light, kill all the passengers of a fully loaded bus and his insurer would have no worry unless it also insured the bus since the insurer of a vehicle only pays benefits to the occupants of that vehicle and has no concern with its insured's recklessness as it relates to the passengers of other vehicles.

Under the AIA plan, it is logical that some who have poor driving records could demand lower rates than motorists with large cars and families. If fault is no longer a proper factor in an auto reparations system, this principle should also be applied to rating. It would be illogical for an insurer to charge high rates to *its own insured* because he causes *other insurance companies* to pay a great deal of benefits to *their insureds*.

In evaluating the plan it is also important to consider its impact upon commercial vehicle owners who now pay some of the highest insurance rates. Since commercial vehicles use roads and highways constantly, their insurers recognize a high loss potential. These drivers are not, as a class, incompetent. Their actual time on the road exposes them to more potential accident involvement and insurers recognize that their liability potential for injury and damages is also great.

However, when rating commercial vehicle insurance, the AIA plan recognizes that the concepts of the present system would not apply:

Since . . . the plan recommended by the committee contemplates essentially that the motorist be responsible for people in his own car, it is clear that commercial vehicles (except public carrying vehicles) will have little exposure because of the absence of family and guests in commercial vehicles. Accordingly, the present cost borne by commercial vehicles will be shifted to some extent to private passenger vehicles.<sup>16</sup>

AIA officials have indicated a possible shifting of some costs back to commercial vehicles once the plan is adopted. This would be illogical and a step which the owners of commercial vehicles could justifiably oppose since under the plan each

person should insure those who occupy his vehicle from loss. Therefore, the insurers of commercial vehicles should not be concerned with the losses that their drivers cause to others, only losses to themselves. A commercial insurer would be hard pressed to justify charging a higher rate to the owner of a truck fleet because *other* insurers had to pay great amounts in benefits to persons injured by the truck drivers. Since it is a first party system, each person should care for himself.

## POSSIBLE REDUCTION OF AUTO LITIGATION

### PLAN AS SOURCE OF LITIGATION

It is clear that the AIA plan will not eliminate all litigation resulting from automobile accidents. However, it is important to consider whether the plan would reduce these lawsuits. It is not claimed that the plan would do away with all auto-tort suits. In fact, the plan provides for residual liability actions and insurance to cover that liability.<sup>17</sup> Countrywide adoption of the plan should result in the abolition of residual liability.

However, even with residual liability eliminated, it is recognized that claimants and insurers will not always agree on interpretation of the plan's provisions or the amount of benefits. Therefore, the plan provides that the jury trial will be retained to resolve these disputes.<sup>18</sup> Regarding reduction of auto accident litigation, the question then becomes whether the litigation involving disputes between claimants and insurers will produce more court cases than now.

Current statistics show that 94 percent of all auto claims are settled without lawsuits being filed and that another four percent are settled without the suit being tried to a verdict.<sup>19</sup> The plan would have to produce a better record than this before a reduction in auto accident litigation could be claimed. Since the AIA proposal is not in operation, there are no statistics available to accurately compare its operation and the present system. However, since the plan contemplates paying benefits to all persons injured in auto accidents, it is unquestioned that there will be more

<sup>16</sup>Note 1 *supra* at 9

<sup>17</sup>*Id.* at 6

<sup>18</sup>*Ibid.*

<sup>19</sup>Note 10 *supra*

claims than now. Persons who can not recover now because of fault will be able to gain limited benefits. Estimates as to the increase in claims under a no-fault auto system vary between 40 and 63 percent.<sup>20</sup> This claims increase will cause a greater number of disputes, based upon interpretation of the plan's provisions or its benefits.

Types of disputes that may result under the AIA proposal should be considered:

1. Regarding hospital and medical expenses, the proposal speaks of paying "reasonable charges for reasonably necessary products and services."<sup>21</sup> Thus, two questions will arise with every claim submitted: a) are the charges reasonable? and, b) were the services or products necessary? Here, disputes may arise between claimant and insurer. Did the claimant really need the doctor's care that long? Was such a lengthy stay in the hospital necessary? Were all drugs, braces and treatments needed? Were costs of these items reasonable? If the claimant and insurer can not agree, "reasonableness" will be a question for a jury.
2. As to benefits for "work loss" the proposal speaks of paying "for loss of income from work (for example, wages) and expenses reasonably incurred for services in lieu of those the injured person would have performed without income."<sup>22</sup> Here again, disputes may arise. Did the claimant have to stay away from work so long? Was the hiring of household help necessary? If it was necessary, was it needed for so long? Would the injured person have performed the services if he had not been injured? Were the charges for the services reasonable? Once again, a jury will have to decide what was "reasonable" in case of disagreement.
3. The plan recommends that an additional benefit be paid for permanent disability or disfigurement and that it be limited to a maximum of 50 percent of medical and hospital expenses. The proposal states that the

actual amount of this benefit will "vary according to the degree of impairment or disfigurement."<sup>23</sup> Here again, disputes may arise. Is the claimant totally disabled so that the 50% rate should be used, or should some other percentage be used? If he is not totally disabled, how is the percentage determined? Is a small scar on a young girl's face worth a 50% rate? Should the percentage be computed on the medical and hospital bills as submitted, or should they be reduced because some of the charges are unreasonable or the services unnecessary? Again, if disputes arise, a jury will decide what is "reasonable."

The percentage of claims that would result in litigation is a matter of conjecture. Since under the AIA proposal persons injured in auto accidents will be asked to endure pain and suffering, the loss of earning capacity, and disability without just compensation, it can be expected that claimants will seek every last penny they think they have coming from their insurer. The sum the claimant may believe is rightly due him and the sum the insurer believes it should pay may be quite different.

Claims that the nature of a no-fault compensation plan will reduce litigation can not be accepted at face value. The same claim was made for workmen's compensation. The AIA plan would be similar to workmen's compensation in that its prime concern is the amount of benefits an injured person has coming.

A 1966 study of Texas trial courts showed that eight times more workmen's compensation claims resulted in court suits than did auto liability claims.<sup>24</sup>

#### POSSIBLE INCREASE FOR PRODUCTS SUITS

Since a claimant under the AIA plan has no right to recover for his pain, suffering, inconvenience or loss of earning capacity and has a right to only minimal benefits for disability, there is a possibility that his attorney would suggest litigation against third parties. The plan prevents one of its insureds from suing another for tort liability, but it says nothing about the right to bring a products suit against the manufacturer of the product involved in the

<sup>20</sup>Harwayne, *The Answer To The Plan's Low Cost*, 3 Trial 47 (No. 6, Oct/Nov 1967)

<sup>21</sup>Note 1 *supra* at 5

<sup>22</sup>*Ibid*

<sup>23</sup>*Ibid*

<sup>24</sup>Note 10 *supra* at 6

accident or against the persons who sold them. Members of the organized plaintiffs' bar have suggested that a claimant's counsel should always consider the possibility of such a products suit in every auto collision case.<sup>25</sup>

While courts have been reluctant to rule that a manufacturer must produce a product that is accident-proof, they may change their position if the AIA plan abolished usual forms of tort liability. It is clear that the plaintiffs' bar is committed to establishing the principle that a manufacturer should be held to insure the absolute safety of its product. The end result of the adoption of the AIA plan may well be the replacement of the normal auto-tort action with one for product liability.

#### THE PLAN'S QUESTIONABLE CONSTITUTIONALITY

There is little doubt that a plan which would severely limit the damages recoverable by the innocent victims of traffic accidents would be subject to having its constitutionality challenged. The AIA proposal states the following:

Most lawyers and legal scholars believe that in today's constitutional climate the courts would be loathe to strike down legislative enactments providing a comprehensive no-fault automobile accident reparations system.<sup>26</sup>

Such a broad, sweeping statement would seem to require a great deal of amplification and documentation. It is questionable whether *most* lawyers and legal scholars have even considered the problem. A reading of the proposal indicates no research on the subject but a total reliance upon the analysis of the constitutional problems confronting the Keeton-O'Connell plan, as set forth by its authors.<sup>27</sup> The situation should be more carefully examined to determine whether constitutional obstacles will be as easily overcome as is believed.

#### DUE PROCESS

The Fourteenth Amendment to the United States Constitution prohibits a state from depriving a person of life, lib-

erty or property, without due process of law. This prohibition has a counterpart in many state constitutions through provisions which guarantee a legal remedy for all injuries.<sup>28</sup> Because of such prohibitions, there is abundant authority for the premise that a state may not completely abolish a cause of action for injuries without substituting another adequate remedy.<sup>29</sup> Proponents of the Keeton-O'Connell plan may argue that the plan will have no trouble in this respect, since it does not abolish all tort remedies. Since the AIA plan would eliminate all tort actions, it must be shown that this scheme substitutes an adequate remedy.

It will undoubtedly be argued that the system of private, first-party insurance envisioned would be an adequate substitute for the tort remedies which would be abolished by statute. Here, there would be strong grounds for disagreement.

Regarding motor vehicle damage, under the AIA scheme there would be no replacement of the existing tort remedy. Under the present system, if a motor vehicle is damaged by the negligence of a third party, its owner may bring a tort action against the negligent person to recover damages. The AIA proposal would absolve the negligent motorist of all liability to other owners' vehicles damaged by careless conduct and each vehicle owner would be forced to assume the responsibility for damage to his vehicle. Under the proposal all insurers would be required to offer a form of non-compulsory collision coverage. This could hardly be considered an adequate replacement for the existing tort remedy which would be abolished. As was previously discussed, even with the collision coverage, the motorist himself would have to pay for protection of his property from the negligence of others and, that protection would not be complete.

<sup>25</sup>For example, the Wisconsin Constitution, Article I § 9 provides:

Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

The words "conformably to the laws" have been held to have the same meaning as "due process of law." *McCoy v. Kenosha County*, 218 NW 348 (Wis 1928).

<sup>29</sup>Ruben & Williams, *The Constitutionality of Basic Protection*, 1 Conn L Rev 44, 46 (1968).

<sup>26</sup>DR1, *Special Bulletin No 6* (Apr 1967).

<sup>27</sup>Note 1 *supra* at 9.

<sup>28</sup>*Ibid*, citing Keeton & O'Connell, *Basic Protection For The Traffic Victim*, Ch 9 (1965).

It is also questionable whether the plan's first party insurance would be considered an adequate substitute for present tort reparations for personal injuries. Here again, the question of adequacy would logically be judged against the remedy innocent victims of auto accidents now have available to them — the remedy which the new plan would completely abolish.

Under the present system a person injured through the carelessness of another may pursue his right to collect damages from the person who injured him. If the injured person has a valid claim, his damages are paid by the person who injured him (or from insurance coverage which the tortfeasor paid premiums to create). Under the new proposal, a person must buy insurance protection for himself to recover some benefits if another person negligently injured him. The change would result in a shift of responsibility from the person causing injury (the present system) to the person who is injured. A court would have to engage in fancy semantic juggling to hold that this is, in fact, a "remedy."

Even if a court could stretch its imagination to a point where it could consider the AIA proposal as a substitute remedy for the present system, the question would remain as to whether the remedy is an *adequate* substitute. Again, it is logical to judge adequacy against the type of remedy innocent victims of auto accidents presently have available.

Under the present system, a person who is entitled to recover damages for injury caused by negligence of another has the right to recover medical and hospital expenses; loss of wages; loss of earning capacity; and payment for disfigurement, disability, pain and suffering — all limited only by the actual extent of his loss. He need not make any payment or buy any insurance to recover. Under the AIA plan payment would be made for medical and hospital expenses (limited to semi-private room expense); limited wage loss; and limited disfigurement and disability loss.

There would be no recovery for lost earning capacity or pain and suffering. All motorists would be required to buy insurance in order to recover these limited benefits, whether or not other insurance coverages they enjoy would be duplicated. The fact that many motorists would be re-

quired to buy insurance which would duplicate coverages they possess from other sources raises the question as to whether this compulsion deprives them of property without due process.

Any objective analysis shows that the AIA plan would not offer adequate substitutes for remedies now available to innocent victims of auto accidents and would, therefore, violate the Due Process Clause.

#### EQUAL PROTECTION

The Fourteenth Amendment to the United States Constitution also provides that no state may deny any person within its jurisdiction equal protection of the laws. The Keeton-O'Connell plan would be challenged here because it only allows tort actions by persons whose out-of-pocket loss exceeds \$10,000 or whose pain and suffering is valued at over \$5000. Keeton and O'Connell consider this problem in their book.<sup>30</sup> A different situation is presented under the AIA plan, and the Keeton-O'Connell arguments would not be applicable even if they were valid.

The Equal Protection question relating to the AIA proposal would be whether its classifications unconstitutionally discriminate against any class of persons. Three areas of classification in the plan are of immediate concern:

- 1) The limitation of recovery for work loss to \$750 a month which would only partially compensate those who earn more.
- 2) The allowance of recovery for property damage to owners of all property, except motor vehicles.
- 3) The determination of the allowance for disability and disfigurement based upon the size of medical and hospital bills and not upon the nature and extent of injury which, in many cases, would cause a person with severe disability or disfigurement to recover less than one who is less seriously injured.

Under an Equal Protection attack, the test of a state's establishment of such classifications is whether they rest on grounds wholly irrelevant to the achievement of the state's objective. A statutory

<sup>30</sup>Keeton & O'Connell, note 27 *supra* at 491

discrimination will not be set aside if any facts reasonably may be conceived to justify the classifications.<sup>31</sup> The Supreme Court has stated:

[T]he law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.<sup>32</sup>

Under such a test, it is difficult to see any logical reason why innocent owners of vehicles should be treated differently than other property owners. It is also difficult to muster a logical reason, other than ease of mathematical determination, for computing a benefit for disability or disfigurement on a percentage of hospital and medical expenses rather than on the nature and extent of the injury itself. As to the classification for wage loss, it is easy to see why a limit was set. To allow unlimited wage loss recovery would mean higher premium costs for the insurance plan. Any limited benefit plan must be sold on its low cost.

It appears that the AIA plan limitations are arbitrary and subject to serious constitutional challenge under the Equal Protection Clause.

#### WORKMEN'S COMPENSATION ANALOGY

Proponents of no-fault auto compensation plans argue that if workmen's compensation laws were held constitutional, a no-fault auto plan should be treated similarly:

If a proposal is sound and in the public interest, constitutional obstacles will be overcome as they were for similar reasons when workmen's compensation laws were enacted.<sup>33</sup>

Keeton and O'Connell pursued the same thought regarding constitutional objection to their plan; however, theirs was a more circuitous route. They first observed that the proponents of the Columbia plan believed their proposal to be constitutional. Then, Keeton and O'Connell observed that workmen's compensation laws were held constitutional. Finally, they con-

cluded that since the Columbia plan and workmen's compensation were more radical departures from tort remedies than their "Basic Protection" plan, a fortiori their plan must be constitutional.<sup>34</sup> While such a bootstrap operation in instant constitutionality presents an interesting exercise in logic, it is not persuasive.

The position that constitutional obstacles to the AIA plan will be overcome for the same reasons that they were with workmen's compensation laws is untenable. Do the same or similar problems exist in the area of auto reparations as existed at the time workmen's compensation laws were developed? One author has described the conditions existing in the early 1900's which brought about workmen's laws as follows:

The industrial accident rate in this country at that time was more than double that of the United Kingdom, France and Germany. Yet injured workers were typically unable to obtain compensation for their injuries. Dismissal and black-listing were powerful deterrents to bringing an employer into court. Even if a workman or his widow did institute suit, the fellow servant rule and the doctrines of contributory negligence and assumption of risk made the prospects of recovery exceedingly remote.

Such conditions could not pass unnoticed, and the outcries of politicians, labor leaders and popular writers lead to an instant demand for reform.<sup>35</sup>

While there are problems in the operation of the present auto reparations system, analysis shows that they do not approach the magnitude of those involving employee accident reparations at the beginning of this century. In fact, the major problems in the auto reparations field lie in the areas of marketing, underwriting and the cost of insurance, not the manner in which persons injured in auto accidents recover compensation.

Regarding auto accident reparations, there are marked dissimilarities to the problems which brought about workmen's compensation laws. Although some critics of the present system claim that its payments are slow and that auto cases clog the courts, statistical analyses have refuted

<sup>31</sup>Note 29 *supra* at 48

<sup>32</sup>*Williamson v. Lee Optical of Okla.*, 348 US 483, 488 (1955)

<sup>33</sup>Note 1 *supra* at 9

<sup>34</sup>Keeton & O'Connell, note 27 *supra* at 484

<sup>35</sup>Note 29 *supra* at 52

that claim. The facts show that court congestion exists in only a small number of jurisdictions and is not caused by auto cases and that most auto cases are settled promptly and without the necessity of court suit.<sup>36</sup> It should also be noted that the majority of Americans have first party insurance coverages which pay hospital and medical expenses and wage loss without regard to fault. Families in the United States are protected by roughly 800 billion dollars worth of life insurance and Social Security coverage is extensive.<sup>37</sup> In all but two jurisdictions uninsured motorist coverage is mandatory or must at least be offered to an insured, or an unsatisfied judgment fund exists.<sup>38</sup> Medical payments coverage providing benefits without regard to fault may be purchased if the insured desires that protection. Insurance companies are engaging in advance payments and open-end release techniques which bring needed money to persons injured in auto accidents promptly. Finally, the development of the contingent fee system allows even the most destitute claimant to have his claim prosecuted by well-trained, competent counsel. Thus, persons injured in auto accidents do not share the same plight as injured workmen of the early 1900's whose chances of receiving compensation were at least remote.

Another important distinction between a no-fault auto reparations system and workmen's compensation can be illustrated by the following quotation from the Supreme Court decision which upheld the constitutionality of the New York Workmen's Compensation Law:

[T]here is the loss of earning power; a loss of that which stands to the employee as his capital in trade. This is a loss arising out of the business, and, however it may be charged up, is an expense of the operation, as truly as the cost of repairing broken machinery or any other

expense that ordinarily is paid by the employer. Who is to bear the charge? It is plain that, on grounds of natural justice, it is not unreasonable for the State, while relieving the employer from responsibility for damages measured by common-law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault, to require him to contribute a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance to fall — that is, upon the injured employee or his dependents.<sup>39</sup>

While it may be easy to agree with the court that natural justice would support a plan by which an employer is required to provide compensation for the injuries employees suffer as a natural hazard of employment, it would be strange indeed to argue that it is natural justice to absolve tortfeasors of all liability and force the persons they injure to expend their own funds to insure that limited compensation will be available. An analogy to workmen's compensation must be strained beyond all bounds to make it apply to auto accident reparations and proposed no-fault compensation plans.

It does not appear that the constitutional hurdles would be as easily crossed. Even Keeton and O'Connell admit that their plan would be unconstitutional in those states in which there is a constitutional ban against limiting the amount recoverable for personal injuries or death.<sup>40</sup>

#### COMPLICATIONS AFTER ENACTMENT

The enactment of a no-fault auto compensation plan would create a serious problem if it were later found unconstitutional. It is possible that the constitutionality of such a plan may not be challenged until long after it becomes law. If such were the case, the problems created by a finding of unconstitutionality would be massive. Once a plan was enacted the insurance industry would have to reorganize — new policies would have to be devised, printed and dis-

<sup>36</sup>Note 10 *supra*; see also, *Court Delay And The Auto Accident Claim*, 7 For The Defense 58 (Oct 1966); *Court Congestion — A Localized Urban Problem*, 8 For The Defense 49 (Sept 1967); *Auto Torts Not Cause Of Court Congestion*, 8 For The Defense 57 (Oct 1967); *Second DRI Study Shows Court Delay Is Limited Problem*, 9 For The Defense 73 (Dec 1968); Ross, *DRI Studies Refute Court Delay Claims Of Critics*, 36 Ins Counsel J 46 (Jan 1969).

<sup>37</sup>Note 29 *supra* at 54.

<sup>38</sup>DRI Monograph, *Uninsured Motorist Protection* at 38 (Nov 1968).

<sup>39</sup>*New York Central R. Co. v. White*, 243 US 188, 203 (1917).

<sup>40</sup>Keeton & O'Connell, note 27 *supra* at 505.

tributed; claims personnel would have to be retrained, etc. Later, if the plan were found unconstitutional, the whole process would have to be reversed. As one insurance executive has noted, the situation would be similar to trying to unscramble an egg.<sup>41</sup> In addition to the logistical problem for the insurance industry, there would be the plight of the person injured in an auto accident between the time the new plan came into effect and a return to the tort system. He would have a valid tort claim against the person who injured him, but there would be no liability policy to cover the claim.

### CONCLUSION

It should be clear that the title, "Complete Personal Protection Automobile Insurance Plan," is a misnomer. The plan is not complete. It is far from being personal.

Claimants under the plan would be treated more like machines than individuals. If a machine is damaged an amount of money can be set to have it repaired; the plan pays hospital and medical bills. If a machine is unproductive while it is being repaired, it is losing money; the plan pays for work loss. If a machine can't be returned to full productivity through repair it is easy to set a percentage on its new output; the plan has a disability benefit

based on an easily calculated percentage. Each of these items lends itself to a neat, fixed, precise bookkeeping entry.

Finally, machines have no feelings; the plan does not consider pain and suffering a fit item for compensation since it varies too much from person to person and there is no precise formula for its computation.

One of the merits of the present system lies in the fact that it treats each person as a person — an individual whose loss is different from that of others and who suffers loss in a different way than others. It is true that the present system has been sharply criticized. It is just as true that many of the criticisms are exaggerated and undocumented. Problems do exist in the operation of the present system but these problems can be resolved within the framework of that system. Leaders of the Bar and insurance industry are devising solutions, some of which are already being applied.

It is claimed that hardly anyone is satisfied with the present auto reparations system and that a change to a no-fault system is demanded. It is often easy to mistake the cries for revolutionary change of a small, well organized minority as a mandate from the majority. However, it should be remembered that the majority is seldom organized and less often vocal. It should also be remembered that all change is not growth and all movement is not necessarily forward.

<sup>41</sup>Kemper Insurance Reports, *The Keeton-O'Connell Plan: Reform Or Regression?* (Oct 1967)

## Appendix

### ANALYSIS OF THE PLAN'S ELEMENTS

Announced at a news conference called by the American Insurance Association in Washington, D.C., on October 21, 1968, the plan provides:

1. **System Of Compulsory Insurance:** It is recommended that the plan be compulsory. If approved, this coverage would be a prerequisite to registering or operating an automobile in the state enacting the proposals.
  2. **Elimination Of Tort-Fault System:** All insureds covered under the plan would be immune from all tort actions resulting from operation of motor vehicles within an AIA plan state.
  3. **Residual Tort Liability:**
    - (a) Since the immunity from tort liability could not apply if an AIA plan insured causes injury or property damage with his vehicle in a state not having enacted the plan, compulsory, residual liability insurance would also be provided. The liability limits would be those "most commonly in use under state financial responsibility laws."
    - (b) A non-insured motorist (a person from a state not having the AIA plan or, a person from an AIA plan state who somehow evaded the compulsory insurance requirement) who causes injury or property damage in an AIA plan state would remain liable in tort. However, if an AIA plan insured made any recovery against such a person in a tort suit, the insurer would have the right to seek reimbursement from its insured for any amount of benefits it had paid under the plan.
  4. **Who Is The Insured?:** Under the plan, the auto owner and his family are covered as well as occupants of the owner's vehicle and pedestrians who are not otherwise covered.
    - (a) **Multiple Policies:** If an injured person is a passenger or pedestrian he must seek benefits from his own insurer, if he has one (except if he is a passenger in a "public vehicle" in which case the coverage of the vehicle would be primary). If the passenger or pedestrian does not have AIA plan insurance available to him, claim can be made against the insurer of any involved vehicle. In that case, "the usual rules of contribution would apply so as to distribute the loss equitably among the insurers."
  5. **Coverage For Out-Of-State Accidents:** The benefits provided under the plan would be available to the named insured, a relative residing in his household, guest passengers and pedestrians, even if the accident happened in a state not having adopted the AIA proposal.
  6. **Assigned Claims Plan:** The plan would apply to losses suffered or caused by non-residents within the state enacting it. For example, a resident pedestrian not covered by the plan who is injured by a non-resident motorist would be entitled to full AIA plan benefits from the assigned claims program. The same would be true for a non-resident driver and his passengers who are injured in an accident in an AIA plan state. However, note 3.(b) *supra* as to the potential tort liability of the non-resident motorist. The assigned claims plan is also designed to apply in cases in which a person not covered by the AIA plan suffers injury caused by a hit and run motorist.
  7. **Benefits Available:** Under this first party insurance system persons injured in auto accidents would be entitled to the following benefits, without regard to their fault:
    - (a) **Medical And Hospital Expenses:** Expenses for medical attention, drugs, etc., and semi-private hospital accommodations would be paid under the plan without a maximum limit on the amount recoverable.
    - (b) **Work Loss:** Benefits for work loss would be paid and would consist of loss of income from work (e.g. wages) and expenses reasonably incurred for services in lieu of those the injured person would have performed without income (e.g. cost of maid service during time a housewife is disabled). There is a 15% tax deduction from any amount of work loss benefits recoverable. The maximum amount of recovery for work loss is \$750 a month.
    - (c) **Death Benefits:** Benefits would be paid to the survivors of a person who dies as the result of an auto accident and consists of:
      - (1) Loss, after date of death, of contributions of tangible things of economic value (not including services) that statutory beneficiaries would have received from the deceased had he not suffered the injury causing death, and;
      - (2) Expenses reasonably incurred by such statutory beneficiaries after the date of death in obtaining ordinary and necessary services in lieu of those the deceased would have performed for their benefit had he not suffered the injury causing death.
- Economic loss suffered by an insured before death, and unpaid at the time of death would be paid to the beneficiaries in a lump sum.
- (d) **Funeral Expenses:** In case of funeral and burial expenses, reasonable charges not to exceed \$1000 would be paid.
  - (e) **Permanent Impairment Or Disfigurement:** The plan would make no payment for pain and suffering; however, a benefit would be paid for permanent impairment or disfigurement. The size of the benefit would vary, depending on the extent of the injury, but would not exceed 50% of the hospital and medical specials.

- (f) *Property Damage (Non-Auto)*: The owners of property (other than an auto or its contents) would be considered as additional insureds under the plan and, as such, would be paid for damages to their property caused by auto accident.
- (g) *Rehabilitation*: The proposal contemplates payment for the cost of rehabilitation, which could not be unreasonably refused.
- (h) *Periodic Payments*: Payments under the plan would be made on a periodic basis as losses accrue.
8. *No Collateral Source Deduction*: Payments under the plan would be made despite the fact that the claimant has recovered for the same loss from other forms of insurance or benefit programs.
9. *Property Damage (Auto)*: In a state enacting the plan, each owner would be responsible for the damage to his own vehicle. There would be no tort liability for this damage. Collision coverage would be offered to insureds but would not be compulsory.
10. *Disputes Between Insurers And Insureds*: The jury trial and common law practice and procedure would be retained to settle disputes between insurers and their insureds regarding coverages and amounts due. Also, this means of litigation would be open for all cases involving residual liability claims noted in 3. above. The claimant would be responsible for his own attorney's fees in all actions against his insurer unless the court would find that the insurer unreasonably refused to settle the claim or unreasonably delayed payment.

#### COMPARISON OF AIA AND KEETON-O'CONNELL PLANS

The AIA plan is modeled after Keeton-O'Connell's "Basic Protection" plan. The plans are so similar that it is easier to compare their differences than their similarities:

1. *Elimination Of Tort-Fault*: While Keeton-O'Connell would only eliminate tort action if out-of-pocket loss is under \$10,000 and pain and suffering is valued under \$5000, the AIA
2. *Residual Liability Insurance*: The AIA plan makes the purchase of residual liability insurance compulsory so as to cover its insureds who drive in states not having the plan (note p. 21 No. 3(a) *supra*). Keeton and O'Connell make no such provision under their plan. Therefore, under Keeton-O'Connell an insured would have to recognize this potential of liability and purchase this coverage of his own accord.
3. *Limitation Of Benefits*: Neither plan includes payment for pain and suffering under their basic coverages. However, the AIA plan does provide minor benefits for permanent impairment and disfigurement (note p. 21 No. 7(e) *supra*). Both plans limit work loss recovery by a 15% tax deduction and a maximum recovery of \$750 a month. Other than the wage limit, the AIA plan has no limit on maximum recovery while Keeton-O'Connell's benefits are limited to a maximum of \$10,000.
4. *Collateral Sources*: Benefits under the Keeton-O'Connell plan are reduced by any amounts that the injured person receives from collateral benefits. There is no such setoff under AIA's plan.
5. *Property Damage (Non-Auto)*: The AIA plan provides for damage to non-auto property (note p. 22 No. 7(f) *supra*). Keeton-O'Connell has no such provision; therefore, present tort rules apply.
6. *Property Damage (Auto)*: The AIA proposal would make owners responsible for damages to their own vehicles and thereby eliminates tort liability. Collision coverage would be offered but would not be compulsory. Under the original Keeton-O'Connell plan no provisions were made for vehicular damage; therefore, tort rules apply. Subsequent modifications of the Keeton-O'Connell plan provide for forms of collision coverage which would exempt the vehicle owner from tort liability to other vehicle owners if he would purchase collision coverage on his own auto.

# ADDENDUM

## An Analysis And Critique Of

An Automobile Insurance Proposal  
Prepared For Study And Comment By The  
American Insurance Association

Since this Special Report was published in February, 1969, there have been several significant developments regarding the American Insurance Association Plan. These call for expansion of the analysis first given to the plan in *An Analysis And Critique*.

### LEGISLATIVE CHANGES

Initially, the proposal offered no model legislation or sample statutes to implement it. However, legislators in at least two states considered the basic proposals and drafted their own legislation. The differences between the original AIA proposal and this legislation are significant. They demonstrate the extent to which legislators may modify original proposals to conform them to their own personal philosophy.

Connecticut House Bill 6763 was introduced into that state's legislature on January 15, 1969. With two major exceptions, it was modeled closely after the original AIA proposal. While the original proposal set only two limitations on wage loss benefits (a 15% income tax deduction and \$750 a month maximum) this bill added a third providing for a "standard" 10% wage loss deduction. Therefore, an injured person could recover no more than 75% of lost wages up to a maximum of \$750 a month. In addition, although the original proposal disallowed deductions from AIA benefits if the injured person also recovered from a source collateral to his AIA policy, Bill 6763 made another modification — there would be no duplication by the payment of AIA benefits to a person if he had or was entitled to receive similar benefits from any "governmental source." While that term is not defined, it could include such things as workmen's compensation, medicare, medicaid, social security disability benefits, etc.

Connecticut Senate Bill 731 was introduced on the same day as its House counter-

part and had provisions for the same type of limitation on wage loss recovery. It also expanded the collateral source deduction. Under its provisions no AIA benefits would be paid if the insured received or was entitled to duplicate benefits from, for example, accident and health insurance, wage continuation plans and government benefit programs. This, in effect, would make the AIA coverage secondary and all other benefits primary. In this regard, the Bill is quite similar to the collateral source provision of the Keeton-O'Connell plan. Neither of the Connecticut Bills was acted upon by the state's legislature.

In Minnesota, Senate Bill 753 was introduced during the 1969 term of the state's legislature. It was similar to Connecticut Senate Bill 731 in its limitation on wage loss recovery and complete collateral source deductions. But the Minnesota proposal departed from the original AIA plan to even a greater extent. The original proposal called for residual liability insurance to be compulsory so that the insured would be protected if he caused an accident in a state not having the AIA plan. However, the original proposal stated that the limits of the residual coverage would be fixed at the financial responsibility limits of the state in which the motorist was operating his vehicle. The Minnesota Bill set these limits at \$50,000/100,000/10,000. The original AIA proposal called for a benefit to be paid for disfigurement and permanent disability, computed on percentages of up to 50% of the insured's medical expenses. In contrast, the Minnesota Bill provided that the amount paid would be one-half of the maximum benefits for comparable injuries under the Minnesota Workmen's Compensation Act with a maximum limitation of \$25,000. The final significant difference between the original AIA proposal and the Minnesota Bill concerned commercial vehicles. The original AIA proposal held that each vehicle owner should pur-

chase first party coverage to protect himself and his passengers. The Minnesota Bill varied this theme by providing that insurers of vehicles "larger than an ordinary passenger automobile" would be responsible for a percentage of AIA benefits paid to the occupants of other vehicles involved in accidents. The commissioner of insurance for the state was to classify all motor vehicles into categories and would assign each a percentage of responsibility for benefits to occupants of other vehicles. This provision can be explained through an example. If the commissioner classified all pickup trucks as "15% vehicles" and a pickup truck was involved in an accident with a private passenger car, the truck's insurer would be liable for 15% of the AIA benefits paid to the occupants of the passenger car in addition to all the benefits paid to the truck driver and its occupants. The Minnesota legislature took no action on Bill 753.

#### COST ANALYSIS

When the AIA plan was released, claims were made that its enactment would result in substantial savings for those who now purchase automobile liability insurance. The American Mutual Insurance Alliance Actuarial Committee made a six-month study of the statistics which had been used to develop these cost projections. Their conclusion was that the plan would not be as inexpensive as was claimed by its supporters.

Paul S. Wise, AMIA president, said that Alliance figures show an overall three per cent cost reduction in three categories of automobile coverage, compared to a claimed 30 per cent reduction. He also indicated that these statistics would change if a 10 to 15 per cent premium increase were needed to bring rates up to an adequate level. The Alliance conclusions were:

1. An insured person presently carrying "minimum coverage" 10/20/5 liability and uninsured motorist would pay an average of five per cent less under "no fault" minimum coverage rather than the estimate of 45 per cent saving.
2. An insured person presently carrying 10/20/5 liability and uninsured motorist plus collision would pay an average of five per cent more, in contrast to a projected 19 per cent saving.
3. An insured person carrying 25/50/5 liability, 10/20 uninsured motorist,

collision and \$1,000 medical payments would pay an average of nine per cent less rather than a claimed 29 per cent.

4. In addition, Wise reports that losses covered by the "no fault" plan but which were not included in cost calculations would cause still more divergence:
  - a. Income loss due to permanent partial injuries.
  - b. Income loss beyond 99 weeks of disability due to permanent total injuries.
  - c. Survivors' benefits in death cases.
  - d. Out-of-state property damage liability (omitted only from the "minimum coverage" estimates).

The Alliance report also indicates that the number of auto accident victims who would collect under the compulsory accident and disability coverages of "no fault" has been underestimated. It also was critical of the premise that disability payments could be adjusted periodically to keep pace with inflation and to reflect the probable earning power a disabled person would have attained had he not been injured. The difficulty lies in establishing adequate rates to cover future imponderables and how to measure the earning capacity of young persons whose aptitudes and income levels had not been established at the time of the accident. Wise said, "Adoption of this concept of floating benefits would require the establishment of long-term, fluctuating loss reserves and an increase in current insurance rates to make sure these reserves are adequate to cover future benefit increases for persons injured today."

#### AIA SAMPLE STATUTE

As previously noted, a sample statute was not issued with the original AIA proposal. Because of this the precise details of the plan were not known when *An Analysis And Critique* was issued. To date no public announcement of a model legislation or a sample statute has been made. We have received a sample statute which is dated June 17, 1969. It is not possible to know whether this is a "final" or only a "preliminary" draft. However, the differences between it and the original AIA proposal are significant. They indicate changes in thought by originators of the proposal.

#### WAGE LOSS LIMITATIONS

In the original proposal the only limitations upon recovery of wage loss benefits

was the 15% tax deduction and the \$750 per month maximum limit noted earlier. The sample statute modifies this by providing a \$25 per day limit on wage loss benefits for persons who are away from work less than a month.

#### DISABILITY BENEFITS

As previously noted, the original proposal called for a benefit for permanent disability or disfigurement computed on percentages of up to 50% of the injured person's medical expenses. The sample statute has no such provision. Therefore, under the statute there would be no benefit at all for the type of loss presently classified as "pain and suffering." The only compensation would be for wage loss, medical and hospital expenses, and a death benefit.

#### SURVIVORS LOSS

The original proposal provided for a survivors loss benefit if death resulted from an automobile accident. The sample statute clarifies the maximum amount of the benefit. It provides that the deceased's life expectancy will be computed on mortality tables determined by the insurance commissioner. The benefit will not exceed the sum of \$750 multiplied by the number of months of the deceased's life expectancy.

#### COLLATERAL SOURCE SET OFF

Although the original proposal specified that a deduction from AIA benefits would not be made if the insured also received similar benefits from sources collateral to the AIA policy, the sample statute modifies this. It is similar to Connecticut House Bill 6763, in that it specifies that AIA benefits would be reduced by any amount the insured receives or is entitled to receive from any "statutory source." Again, this term is not defined but could include workmen's compensation, medicare, medicaid, social security disability benefits, etc.

#### COMMERCIAL VEHICLE MODIFICATIONS

The original proposal called for each insured to seek AIA benefits from his own insurer, except when he was injured while driving or riding in a public passenger vehicle. In such a case, the insurer of the public passenger vehicle would provide primary coverage for the vehicle's driver and all passengers, even if they were also covered by their own policies. The sample

statute follows this proposal but adds additional provisions as to which insurer will be primary. Vehicles designed or primarily used to transport property or equipment over public highways are singled out. Their insurers would be primarily liable (up to \$1 million) to pay AIA benefits to all persons in other vehicles injured in accidents which involved these commercial vehicles. Thus, for example, if a truck and two private passenger autos were involved in an accident, the truck's insurer would be liable to pay AIA benefits to the occupants of the two automobiles, in addition to whatever liability it might have to the truck's occupants. This liability is absolute and the absence of fault of the commercial driver would not matter. The commercial vehicle's insurer would appear to be liable even if the vehicle were legally parked at the time of the accident. The only exception to this absolute liability would arise if the accident involved a public passenger vehicle and a commercial vehicle. In such a case the insurer of the public passenger vehicle would still be responsible to pay AIA benefits to its driver and passengers.

As noted in *An Analysis And Critique*, the AIA plan would also cover damage to property (other than automobiles and their contents) by making the property owner an additional insured. The sample statute also imposes absolute liability on the insurers of commercial vehicles by making them responsible for any non-auto property damage resulting from an accident. Again, the limit of this liability is \$1 million. Another example would be in order since it would appear that if a truck was properly parked and was struck by a passenger car, the truck's insurer would be liable for any property damage caused if the truck were moved over the curb, striking a building or store front.

#### CONCLUSION

The variations between present AIA proposals and the original AIA plan have been noted. Since a sample statute or model legislation was not issued when the original proposal was introduced, it is only possible to note significant differences between the propositions, then and now. This Addendum notes these differences so as to point to possible changes in thinking and philosophy which may have taken place after the proposal was introduced and was subjected to scrutiny and analysis.

November, 1969

## EXHIBIT D

a  reprint---

## Automobile Insurance: The Rockefeller-Stewart Plan

Reprinted from the INSURANCE COUNSEL JOURNAL, a  
publication of the International Association of Insurance Counsel.  
Vol. XXXVII July, 1970 No. 3

VOLUME 1970

NUMBER 5

A Publication Of

THE DEFENSE RESEARCH INSTITUTE, INC.

(A Non-Profit, Non-Stock Corporation)

1212 W. Wisconsin Avenue • Milwaukee, Wisconsin 53233

# Automobile Insurance: The Rockefeller-Stewart Plan

JAMES D. GHIARDI\* AND JOHN J. KIRCHER\*\*

## Introduction

The announcement of a "new" automobile insurance proposal developed by New York's insurance commissioner, Richard E. Stewart, and governor, Nelson A. Rockefeller, was typical of other announcements of other "new" plans and proposals which had come before it.<sup>1</sup> A news release was issued.<sup>2</sup> It, as others had before it, began with a recitation of all of the "shortcomings" of the present automobile insurance and accident reparation system — too slow, too costly, too inequitable, too impractical, and not in tune with modern times. The possibility of improving the present system was termed impossible because of basic failings "traceable to its fundamental principles." What is needed, the release claimed as others had before it, is the adoption of the "new" plan which will not only solve all of the problems that exist and make everyone happy (with the possible exception of lawyers), but would do so for half the cost (in this case 44%) of the present system.

The Rockefeller-Stewart proposal (hereafter referred to as the Plan) is not much different than other "new" auto insurance proposals which have been thoroughly analyzed over the course of the past few years.<sup>3</sup> It offers nothing really new. How-

ever, it does shift benefits and adds innovations which make it necessary to examine it carefully so as to clearly establish what it will and will not do.

## No-Fault vs. No-Responsibility

The Plan, developed by the New York Insurance Department staff, is the result of a little less than five months' work.<sup>4</sup> It is amazing that the monumental job of analyzing the present system and developing a new plan could have been accomplished in so short a time. Keeton and O'Connell took nearly two years to do the same work; the American Insurance Association spent nearly sixteen months; and Congress thought the task so difficult and complex that it gave the Department of Transportation two years and an appropriation of \$1.6 million to conduct a similar study. At any rate, what occurred in New York was a speedy condemnation of the present system and the proposal of a "no-fault" automobile accident reparation plan based on the research and cost studies of other groups. Its timing gives it a distinct political flavor.

Actually the Plan and other proposals upon which it is patterned should be referred to as "no-responsibility" rather than "no-fault" plans. Careless and reckless drivers would still speed, pass on hills, cross center lines and otherwise violate the rules of the road. What would be different is that the careless and reckless drivers would not be held responsible for the injuries and damage caused by their conduct. A motorist could run a stop light and collide with another vehicle without being held responsible for the injuries to the people in the other car or damage to the other vehicle. The passengers would have

\*Professor of Law, Marquette University Law School, Milwaukee; Research Director, Defense Research Institute; president, State Bar of Wisconsin; member, American Bar Association.

\*\*Associate Research Director, Defense Research Institute, Milwaukee; member, State Bar of Wisconsin, American Bar Association.

<sup>1</sup>The plan is outlined in a report, *Automobile Insurance . . . For Whose Benefit?* (Feb 12, 1970) [hereafter cited as Stewart Report] which was prepared by the New York Insurance Department staff. Enabling legislation was also drafted and introduced into the New York Senate as Senate Bill 8922 (Mar 16, 1970).

<sup>2</sup>Dated February 16, 1970 and issued by Governor Rockefeller's press secretary.

<sup>3</sup>The Plan contains basic features of both the Keeton-O'Connell and American Insurance Association proposals. See, *Basic Protection — Diminished Justice At High Cost*, 8 *For The Defense* 73 (Dec 1967); Keeton Plan — *Analysis of Major Elements*, 8 *For The Defense* 75 (Dec 1967); The

<sup>4</sup>Stewart Report, note 1 *supra* at iii-iv.

Keeton-O'Connell Plan — *Some Questions And Answers*, 9 *For The Defense* 25 (Apr 1968); DRI Special Report, *An Analysis And Critique of an Automobile Insurance Proposal Prepared for Study and Comment by the American Insurance Association* (Feb 1969) [hereinafter cited as AIA Critique].

to look to the insurer of the car in which they were riding for the limited benefits the Plan provides.

#### *Mini-benefits — Maxi-price*

What the Plan proposes is that the present system be scrapped and that, in its place, each car owner be required to carry insurance that will pay benefits to passengers injured while in his car and pedestrians hit by his car.<sup>5</sup> The benefits are limited to medical and hospital expenses, wage loss and rehabilitation expenses *not compensated from other sources*.<sup>6</sup> "Other sources" include personal accident & health insurance, accumulated sick leave, wage continuation benefits, union health and welfare benefits, workmen's compensation and any other source of benefits — with the exception of those sources which are funded "from general public revenues." Although not defined, it would appear that sources funded "from general public revenues" might include Medicare, Medicaid, Social Security and other public welfare programs. Why persons receiving benefits from public sources will be allowed what amounts to a double recovery and those who receive similar benefits from private sources will not, is unexplained.

A great number of persons injured in New York auto accidents would recover nothing if the Plan were enacted. They would fall within the classification of those "compensated from other sources." According to the insurance commissioner's own report, 91 percent of the workers in New York are covered by health insurance and most are covered by income continuation plans as well.<sup>7</sup> The Plan promises lower premiums for these people. However, for these persons the Plan would be too expensive no matter how cheaply it could be offered. They would be forced, because of the compulsory nature of the plan, to buy insurance from which they could never benefit. The operation of the plan would force a person to look to his sick leave benefits for wage loss reimbursement resulting from an automobile accident. However, such a person would have no source of wage loss reimbursement if the accumulated sick leave were used up as the result

of the auto accident and he later sustained an illness or suffered an injury not connected with an auto accident.

There would be others for whom the Plan would be the equivalent of *Last Resort* or *End-Of-The-Road Insurance*. These would be the persons who would have some of the expenses which result from an auto accident paid by private insurance and benefit plans. Their automobile insurance would only be effective to pay whatever portions of those expenses were not taken care of by the private sources.

The persons who would seem to benefit the most from the Plan would be those who would be covered by Medicare, Medicaid, Social Security, and other public welfare programs. Presumably, many of these persons would not own vehicles and therefore would not be forced to buy the insurance. However, if one of these persons was injured in some form of automobile accident, he would apparently be able to have his expenses paid by the various public welfare programs and also recover benefits from the vehicle's insurer. This would all be without cost to these persons. In addition, the improvident person who uses his income for things other than the purchase of accident & health insurance, wage continuation plans, and the like, would benefit the most under such a plan.

#### *Owning The Right Type Of Property*

The manner in which the Plan handles property damage arising from motor vehicle accidents is similar to that used by other no-responsibility plans.<sup>8</sup> As to damage to motor vehicles, the Plan is truly one of no-responsibility. Each vehicle owner must bear the cost of damage to his own auto.<sup>9</sup> For example, if an auto is properly parked in its owner's driveway when it is struck by a reckless driver, the auto's owner or his insurer would be responsible for the cost of repair. The reckless driver could go merrily on his way without any responsibility for the property damage he caused. Vehicle owners would have to buy collision and comprehensive coverage to ease the burden of shouldering auto repair costs. However, it would have to be bought as a separate coverage and its cost is not included in the alleged "savings" of

<sup>5</sup>Id at 83-4.

<sup>6</sup>Senate Bill 8922, note 1 *supra* § 673.

<sup>7</sup>Stewart Report, note 1 *supra* at 30.

<sup>8</sup>See, e.g., AIA Critique, note 3 *supra* at 10.

<sup>9</sup>Stewart Report, note 1 *supra* at 89.

the Plan.<sup>10</sup> Collision coverage comes with a deductible so that the motorist would shoulder the first fifty, one hundred dollars or more of the automobile repair costs caused by the negligent or careless driving of another.

While innocent vehicle owners must foot the auto property damage bill for the driving habits of the careless and reckless driver, the Plan is more benevolent to owners of non-vehicular property. If a motorist is driving down the street when one of his tires unexpectedly blows out, for example, and he loses control of his car which jumps a curb and strikes and damages a building, his insurer will pay all of the repair costs of the building owner.<sup>11</sup> The question of whether the driver was actually at *fault* for the damage would not be considered. In this case, the liability of his insurer is absolute. All that is needed is that damage to non-vehicular property occur as the result of the use of a vehicle. The insurer of the vehicle is totally responsible for that damage — deserved or not. Thus, a motorist could strike a parked car and his insurer would be liable for damage to the car's contents but not to the car itself.

Recently released statistics indicate that as much as 55 percent of the automobile insurance premium dollar goes to pay for property damage coverages, including damage to automobiles.<sup>12</sup> In some areas of the country the figure is as large as 70 percent of the premium dollar (in Queens, New York, 69%).<sup>13</sup> The Plan does nothing to prevent automobile accidents and thus the cost of the insurance protection needed for property damage would not be lowered, but rather is increased, with its enactment. The shifting of responsibility for non-vehicular property damage to innocent motorists who are not responsible for it should increase the cost even more. Any increase in accident frequency or the cost of repairing damaged property will cause insurance costs to skyrocket. The proponents of the Plan claim that the cost of motor vehicle *property damage liability insurance* would be reduced with their proposal. This promise is true but illusory. Tort liability for motor vehicle property damage is eliminated, but the cost of re-

pairing motor vehicles is actually shifted to collision coverage which each motorist would have to buy so as to provide protection for his own vehicle from damage. The cost of this insurance would surely increase.

#### *Give Up A Lot To Get A Little*

Not only is the Plan typical of other no-responsibility plans in the type of limited benefits it offers; it is also typical of the other plans in terms of what it would require New York residents to give up for the privilege of having such a plan — even if many of them don't really need or want it.

Innocent traffic victims, injured through the careless and reckless conduct of others, would have to give up the right to seek full compensation for all damages suffered in return for a plan that promises to pay limited benefits *only* if compensation is not received from other sources. Under the Plan an innocent traffic victim would be denied compensation for partial and permanent disability, loss of earning capacity, disfigurement, dismemberment, loss of bodily senses, or the pain, inconvenience and suffering associated with injury.<sup>14</sup> All of this would have been borne with Spartan endurance because damages for these items of loss are not easy to compute and are therefore eliminated. A person might suffer the loss of a hand in an auto accident caused by another's carelessness and receive little or nothing from the Plan because economic loss in such a case is relatively small and payments from "other sources" would reduce any payments to be made under the Plan. Yet, he would receive no compensation for the pain and suffering associated with the terrible trauma and the inconvenience and humiliation involved in being deformed for the rest of his life. Proponents of the Plan, as do proponents of other no-responsibility plans, intimate that there is something wrong or dishonest about claiming damages for non-economic loss associated with personal injuries.<sup>15</sup> However, this type of loss is just as real to the person who suffers it as is the medical bill that would have been covered except for the fact that it was paid by another source. Thus, because of the Plan's curious features, a pedestrian

<sup>10</sup>Id at 109 n 187.

<sup>11</sup>Id at 89.

<sup>12</sup>Journal of American Insurance (Nov-Dec 1969).

<sup>13</sup>Id.

<sup>14</sup>Stewart Report, note 1 supra at 84; Senate Bill 8922, note 1 supra § 675.

<sup>15</sup>Stewart Report, note 1 supra at 29 n 47.

would receive no compensation for his disfigurement or dismemberment but any personal property he was carrying at the time of the accident would be repaired or replaced by the insurer of the motorist who struck him. Many New York residents would give up a great deal more than they could ever get. Many would be forced to buy insurance they don't need, to give up their present rights under the law and, in case of an accident, would get nothing in return.

The Plan would give all New York motorists a license to injure any person or damage any motor vehicle found in their state without any responsibility to the person damaged by their conduct — a benefit of questionable value. While you may use your car to injure and maim all you want to under the Plan, you will still be responsible in tort, to the survivors of those of your victims whom you kill. The insurance commissioner's report does not state the position that a person who uses a car to kill has a greater responsibility than one who uses it only to cripple or dismember. Rather, the different treatment for the two types of drivers was occasioned by the belief that absolving the killer of responsibility would be in violation of the New York constitution.<sup>16</sup> The report states that the abolition of responsibility for causing another's death would have to await a future constitutional amendment.<sup>17</sup>

#### *The Plight Of The Commercial Vehicle*

The commercial vehicle has been singled out for special treatment (or mistreatment). Owners of commercial vehicles will be absolutely liable to reimburse insurers of other vehicles for all the benefits which have been paid as the result of an accident involving a commercial vehicle.<sup>18</sup> The owners of commercial vehicles would also be responsible for property damage to "any other kind of motor vehicle."<sup>19</sup> The definition of "commercial vehicle" used by the Plan is that found in the state's Vehicle And Traffic Law. Section 376 (11) (b) of that Law defines "commercial vehicle" as:

Every type of motor-driven vehicle used for commercial purposes on the highways,

<sup>16</sup>Id at 86 n 139.

<sup>17</sup>Ibid.

<sup>18</sup>Senate Bill 8922, note 1 supra § 671(3).

<sup>19</sup>Id § 671(3)(b).

such as the transportation of goods, wares and merchandise and motor coaches carrying passengers; including trailers and semitrailers, and tractors when used in combination with trailers and semitrailers, and excepting such vehicles as are run only upon rails or tracks.

The Plan, however, specifically excludes the owners of "a motor coach for carrying passengers" from its absolute liability.<sup>20</sup> The reason for the exclusion is that the drafters of the plan believe that "motor coach" owners will have enough of a burden.<sup>21</sup> Under the Plan they will be responsible to pay benefits to all of their injured passengers. In an accident involving a large bus, the exposure of the bus owner or its insurer could be great. Interestingly, the Plan and the Vehicle And Traffic Law are both silent as to the definition of "motor coach," although the latter defines "bus" in Section 104 as:

Every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

It would appear that trucks, taxis, and passenger cars "used for commercial purposes" would be subject to the plan's absolute liability provision. There will unquestionably be a number of lawsuits to judicially determine whether certain vehicles are or are not "used for commercial purposes" or come under the term "motor coach." As with the insurer of any vehicle involved in a collision with non-vehicular property, the liability of the owner of a commercial vehicle is not based upon responsibility for the accident. Rather, a collision between a commercial and non-commercial vehicle is all that is needed for the liability of the owner of the commercial vehicle to be established. After that, the only question to be determined is the number of dollars and cents involved. The utter inequity of this feature of the Plan can be shown by the following illustration:

Two passenger car drivers become involved in a drag race and run an arterial stop sign. Both collide with a taxi that enters the intersection on the arterial. The cab

<sup>20</sup>Note 18 supra.

<sup>21</sup>Stewart Report, note 1 supra at 91 n 150.

driver, his passengers and the drivers of the speeding cars are injured. All three vehicles are total wrecks. The cab owner would have the following responsibility:

1. To reimburse the insurers of the two speeding cars for the Plan's benefits paid to the drivers.
2. To pay the two speeding drivers for the loss of their vehicles.
3. To pay the Plan's benefits to the passengers of the cab if they were not compensated from other sources.
4. To pay the Plan's benefits to the cab driver if he was not compensated by workmen's compensation or some other source.
5. To pay for the loss of the cab.

Unless one of the cab's passengers or its driver died as a result of the accident, those persons would have no right to hold the speeding drivers responsible for the damages they had caused. Why should commercial vehicles in New York be singled out for such outrageous treatment? If the proponents of the Plan believe that a no-responsibility plan is the answer to present automobile accident reparation problems, they are inconsistent in their resort to complete responsibility in the case of commercial vehicles. Perhaps the claimed cost savings for the "average motorist" is accomplished by shifting the cost to the commercial vehicle — like robbing Peter to pay Paul.

#### *Pity The Career Pedestrian*

A person who does not own a motor vehicle and who would be "compensated from other sources" should he be injured in a motor vehicle accident would lose the most as the result of the enactment of the Plan. It provides that the insurer of a motor vehicle involved in an accident with a pedestrian would pay the Plan's benefits to the pedestrian.<sup>22</sup> However, this would be no help to the pedestrian who has his out-of-pocket expenses "compensated from other sources." He would not be entitled to benefits and would not be able to seek damages from the motorist whose reckless or careless conduct caused injury. Motorists are absolved of all responsibility in this type of accident, unless they were so thoughtless as to kill one.

<sup>22</sup>Senate Bill 8922, note 1 supra § 671(1).

The career pedestrian who would be "compensated from other sources" really gets the worst of the bargain. He is not only forced to give up the right to recover damages from the careless motorist, but retains personal responsibility for any damages caused to others by his own careless or reckless conduct as a pedestrian. The Plan only abolishes actions "based on negligence in the use or operation of a motor vehicle."<sup>23</sup> Thus, a pedestrian who suddenly darted into the street and caused a motorist to swerve his car into a tree, for example, would be liable to the motorist for auto damage and personal injuries just as if the Plan had never been enacted. On the other hand, the motorist who runs down a pedestrian with "other sources" of compensation would have no responsibility as long as the pedestrian was not killed.

#### *The Drunk And The Drugged*

Many of the no-responsibility plans which came before the Rockefeller-Stewart proposal have been criticized because they would allow the drunken driver, the escaping criminal, or the driver who is operating under the influence of a narcotic drug to recover benefits on the same basis as the innocent traffic victim who is injured by such use of a motor vehicle. It is clear that the proponents of the Plan sought to meet and avoid this type of criticism. The approach they use is novel, but does not strike at the heart of the issue.

The Plan provides that the drunken or drugged driver, the person operating a vehicle while committing a felony, and the person operating a vehicle with the specific intent of causing injury or damage will be absolutely liable, without regard to fault, to reimburse insurers of other vehicles for benefits paid and for property damage to other vehicles.<sup>24</sup>

Persons belonging to these four classes become, for the purpose of the plan, absolutely liable in the same manner that owners of commercial vehicles are absolutely liable. It is not necessary that the drunk or drugged condition be shown as the cause of the accident. All that is needed is an accident between a car operated by a person in one of the four classes and another car or person.

or could be struck from the road while

<sup>23</sup>Id. § 675.

<sup>24</sup>Id. § 671(4).

stopped at a stop light and he would be held responsible to repair the car of the person who struck him and pay the insurer of the other car for any benefits it paid the careless driver. Everyone would admit that those four types of drivers are a menace and should be kept off our roads, but the Plan ignores highway safety and only seeks to redistribute losses caused by these unsafe drivers. In fact, because of the compulsory nature of the Plan, these individuals are assured of insurance.

Even with this provision designed against drunken and drugged drivers, etc., the Plan still provides them with the same type of beneficial treatment that has subjected other plans to criticism. Even though a drunken driver may be liable to reimburse another insurer for benefits paid to persons he injured by his drunken operation of a motor vehicle, he is still allowed to recover benefits from his own insurer. He may not even be liable to another insurer since the person he injured may be one who has received benefits from another source and therefore would not be entitled to benefits. The proponents of the Plan recognized the problem of the drunk and the drugged driver but they did not adequately deal with the issue.

#### *The Problem Of Gaps And Cost*

The proponents of the Plan claim that if their proposal were enacted and motorists bought their basic coverages rather than present coverages, significant savings would result from present auto insurance premium costs. The Plan calls for three basic compulsory coverages:

1. The first party, no-responsibility coverage.
2. \$10,000/20,000/5,000 liability coverage for out-of-state BI and PD claims and for in-state wrongful death claims.
3. Non-vehicular property damage coverage.<sup>25</sup>

It would be clear to the prudent motorist that the Plan would leave certain coverage gaps which he would want to fill. These would include:

1. Coverage for situations in which strict liability is imposed because of drunken or drugged driving or while committing a felony or driving with an intent to cause injury.

2. Collision coverage for property damage to owned vehicles.
3. Comprehensive coverage to provide for theft, vandalism, fire and windstorm damage.
4. Coverage for situations in which absolute liability is imposed upon commercial vehicles.
5. Additional liability insurance protection over the plan's basic rates of \$10,000/20,000/5,000 for out-of-state BI and PD and for in-state wrongful death.
6. Uninsured Motorist Coverage. (The proponents of the Plan stated that the role of the New York Motor Vehicle Accident Indemnification Corporation (MVAIC) would be changed if the Plan is adopted. How MVAIC will be involved in uninsured motorist situations is not clearly spelled out. However, at the least, some form of U.M. coverage would be taken out by a prudent motorist for driving out of New York state.)<sup>26</sup>

The purchase of any of these additional coverages would, of course, reduce any saving that could be achieved if the plan was enacted. Any additional coverages, such as the proposal for optional first party insurance to offset elimination of pain and suffering recoveries, would have a similar effect.<sup>27</sup> The number of additional coverages purchased would have a direct relation to the financial status of the insured.

Will the Plan be made available for 56 percent less than is presently paid for auto insurance in New York? The cost saving estimates of the proponents of the Plan speak of savings of "as much as" 56 percent and therefore, even if the Plan lives up to their optimistic expectations, all insurance buyers will not gain such savings.<sup>28</sup> The first reaction that one has to the cost prediction of the proponents is that it would be very inequitable for a plan with benefits as limited as those to charge any more than the estimates. In some cases, insurers that charge rates even on the 56 percent reduction figure might be criticized. Clearly, the Plan would be grossly expensive for those who will be unable to receive its benefits because they are "compensated from another source." For those who will be unable to recover for the disability, disfigurement, dismemberment,

<sup>25</sup>Id at 85 n 137.

<sup>27</sup>Id at 95.

<sup>28</sup>Note 2 supra.

<sup>26</sup>Stewart Report, note 1 supra at 109 n 187.

pain, suffering and inconvenience caused by the negligent or careless driving of others the Plan will also be too expensive.

Whether the Plan will actually achieve the reduced cost structure predicted of it is open to debate. The actuarial data used by the New York Insurance Department for its cost analysis was taken primarily from the study conducted by the American Insurance Association to cost its own proposal. The validity of this study by AIA has been seriously challenged.<sup>29</sup> Independent actuaries retained by a New York Senate committee have studied the cost analysis of the New York Insurance Department and have concluded that the actual cost of the Plan would be significantly higher than that which was predicted.<sup>30</sup> The fact that there is a disagreement as to the actual cost of the Plan should, of itself, be a sufficient reason to move cautiously. Further, any savings which could possibly be achieved would result only from a reduction in benefits.

Who will pay the most for the insurance coverage offered by the Plan? It seems certain that, as with other proposals of a similar nature, premiums charged would not depend upon whether the insured has a good or poor driving record — whether an insurer is forced to pay the Plan's benefits is not dependent on the fault of its insured. With protection from "other sources" being equal, the safe driver may end up paying more for the Plan's coverage than a highway menace simply because he and his passengers may be entitled to recover more benefits under the plan than the person who caused the accident in which they were injured. "Bad risks" under the plan would be insureds with large families, cars capable of holding many passengers, working wives, above average incomes, and other characteristics indicating a large benefit pay-out in case of an accident — even if it was caused by another motorist. "Good risks" would be those who are unemployed or have small incomes, have small or inexpensive cars, and have other characteristics which in-

dicade a small pay-out of benefits in case of an accident — even if they cause the accident by their careless driving. The whole process of merit rating and good driver discounts would be turned around under a program such as the one offered by the Plan.

It has been recognized that the Plan seeks to lower insurance costs by making its coverages secondary to the "other sources" which were discussed previously. This method of cost reduction will only last as long as the "other sources" or those who offer them are content to allow the Plan to have this free ride. If those who offer the "other sources" would revise their programs or contracts to provide that they would pay no benefits in automobile accident cases or would pay them only after benefits from applicable auto insurance had been exhausted, the Plan would become the primary source of benefits and the cost savings achieved by the "other sources" setoff would disappear.

#### *Legal Problems*

All of the various no-responsibility proposals presented to date claim, as one of their aims, to end "the automobile accident litigation that is crowding our courts."<sup>31</sup> Claims that most jurisdictions are troubled with court congestion and that the average automobile accident claimant must wait a long time for compensation have been more than adequately shown to be without merit and need not be discussed further.<sup>32</sup> There is court delay in some areas of New York, but to be considered is whether the Plan itself will have an impact on litigation.

First, it should be clear that all litigation arising from automobile accidents will not be eliminated by the stroke of the pen which would sign the plan into law. By its own terms, the plan would do nothing to affect wrongful death actions which result from motor vehicle accidents. New York has common borders with Canada and five other states. Many of New York's large population centers abut these borders. New Yorkers would remain liable in tort for any injuries or damages caused by their operation of motor vehicle outside of their

<sup>29</sup>See, e.g., Report of the American Mutual Insurance Alliance Committee on the Adequacy of the Costing of the American Insurance Association's "Complete Personal Protection Automobile Insurance Plan" (May 2, 1969).

<sup>30</sup>Woodward & Fondiller, Review and Summary Report, New York Insurance Department, "Automobile Insurance . . . For whose Benefit?" (Apr 28, 1970).

<sup>31</sup>See, e.g. Keeton & O'Connell, Basic Protection For The Traffic Victim at 14 (1965).

<sup>32</sup>Ross, DRI Studies Refute Court Delay Claims of Critics, 36 INS COUNSEL J 46 (Jan 1969).

home state. In addition, the reasoning followed by many state courts in cases involving conflict of laws questions would lead one to believe that a person from New Jersey, for example, could find a court in his home state willing to hear a negligence action resulting from an accident in New York involving a New York driver. In fact, the rulings of New York courts on conflict of laws issues would indicate that a New Yorker injured in an auto accident in another state would be allowed to use the New York courts for his action against the responsible motorist. Since the Plan would only eliminate negligence actions based upon the use or operation of a motor vehicle "in this state,"<sup>33</sup> two New Yorkers could collide in New Jersey or Connecticut and use the New York courts to resolve their dispute.

Also, the plan would only do away with personal injury and property damage claims "based on negligence in the use or operation of a motor vehicle."<sup>34</sup> Therefore, it would not prevent a person injured in an automobile accident from making a claim against the manufacturer of one of the vehicles involved on the theory that defective design or construction caused the accident. Claims against automobile garages and service stations alleging faulty repair or maintenance would still be possible. Suits such as these are becoming more prevalent, even without no-responsibility plans, and one can surely forecast more interest in this type of litigation should normal automobile liability claims be eliminated.

Suits against other classes of persons, not engaged in the "use or operation of a motor vehicle," would still be possible. The plight of the career pedestrian who is found responsible for the damage and injury caused in a motor vehicle accident has been discussed. Those who operate bicycles or ride horses would "enjoy" a similar status with the pedestrian. The persons who sell intoxicants to motor vehicle operators would, under a Dram Shop Law,<sup>35</sup> remain liable to persons injured by intoxicated drivers. Suits which allege that an auto accident occurred because of an alleged defect in a road, improper road design or signing would also be possible. In addition, since the Plan only eliminates

negligence actions, there would be no way to prevent suit against a motor operator on the ground that he acted recklessly or wantonly caused injury or damage. The question arises as to whether actions involved in a design defect designated as "grossly negligent" would be held as being "based on negligence" within the meaning of the provisions.

Since certain classes of persons are mainly liable to motor vehicle accidents, a question arises which rights which an individual in one class would have against a motorist. For example, if a passenger injured in an automobile accident brings suit against the automobile manufacturer claiming defective design, the manufacturer would assert that the accident was actually the fault of the passenger. Can the manufacturer ask, that at the accident be found to be caused by its fault and that of the driver, that the allowed contribution from the driver's portion of the passenger's damage contribution claim is eliminated? Can the manufacturer be liable for all the or only a portion attributable to negligence? These types of problems will keep New York courts and lawyers busy for some time.

Will the provisions of the Plan result in disputes between claimants and insurers? One does not have to be a expert in insurance law, but only examine some of the Plan's provisions to see the types of questions which will call for judicial interpretation:

1. Were the medical and hospital expenses of the claimant "reasonable"?
2. Were the medical and hospital payments received by the claimant "satisfactory"?
3. Were the expenses for medical and hospital treatment actually "incurred" by the claimant?

(Questions 1, 2 and 3 can be repeated as far as physical and occupational rehabilitation are concerned)

4. Would the money sought by the claimant for loss of income have "not been earned but for the injury"?
5. What amounts would have "been paid but for the injury" by a prudent

<sup>33</sup>Senate Bill 8922, note 1 supra § 675.

<sup>34</sup>Ibid.

<sup>35</sup>NY Gen Obligation Law § 11-101 (Supp 1967).

<sup>36</sup>Senate Bill 8922, note 1 supra § 671.

is totally and permanently disabled by an auto accident and unable to complete school or pursue the occupation for which he was being trained?

6. Is the loss of income from an investment which would have been made except for an automobile accident injury an amount which would have "been earned but for such injury"?
7. Just what are "all other expenses reasonably and necessarily incurred on account of such injury"?
8. Is the claimant entitled to benefits at all because his expenses were reimbursed "from other insurance or similar sources"?

These few questions bring to mind the words of a famous jurist:

The intrinsic difficulties of language and the emergence, after enactment, of situations not anticipated by even the most gifted legislative imagination reveal the doubts and ambiguities in statutes that so often compel judicial construction.<sup>37</sup>

It would appear that the Plan may even produce business for attorneys who specialize in tax law. The plan provides for payment of lost income less "taxes which would have been payable on such lost earnings."<sup>38</sup> A person receiving a reimbursement for lost earnings "less taxes" would assume that the net amount received is not subject to tax. However, there is no gross income benefit from which the insurer subtracts taxes. Rather, it only pays a net sum on the theory that the sum paid is not subject to taxes. No funds are transferred by the insurer to the government. The Internal Revenue Code stipulates that "the amount of any damages received (whether by suit or agreement) on account of personal injuries" need not be included in gross income.<sup>39</sup> The Internal Revenue Service may not be inclined to agree that a direct, first party reimbursement of lost income falls within that definition.

#### *Will The Plan Solve The Problems?*

One must ask if the adoption of the Plan would solve New York's auto insurance problems.

One major problem is the cost of automobile insurance. There are two basic reasons why the cost of automobile insurance has increased: 1) more accidents and 2) inflation. Rather than proposing legislation which will get the drunks, drug addicts and habitual traffic law violators who cause accidents off the road, the Plan reduces the amount of damages their victims can recover. It treats the effects and not the cause.

One of the major items of expense in the automobile insurance premium bill is the cost of repairing physical damage to motor vehicles. Rather than pressing for automobiles that are more easy to repair, the Plan proposes that each vehicle owner be responsible for his own property damage. It treats the effects and not the cause.

There is a constant increase in litigation in all areas of the law which has resulted in crowding of court calendars in certain metropolitan New York jurisdictions. Rather than creating new judgeships to keep pace with population growth, the Plan would close the courthouse doors to certain litigants and bring forward a proposal so complex that more new litigation may arise than the plan would eliminate.

The Plan does not appear to answer the problems that beset the present automobile accident reparation system. It offers a system of no-responsibility motor vehicle insurance in the face of empirical research which shows that such a system would lead to an increase in motor vehicle accidents.<sup>40</sup> It offers too little and asks for too much to be given up in return. Other proposals which call for improvement of the present system appear more realistic.<sup>41</sup> They seek to solve the problems which exist without denying basic legal rights.

The Plan, presented as a socially oriented proposal to aid the insurance consumer, is, at the same time, discriminatory against the poor, blue and white collar workers, the young and that large group of citizens who would be unable to fill all of the gaps left open by its provisions. It forces a person to use up all of the fringe benefits he and his union have worked so hard to

<sup>37</sup>DRI Special Report, *Fault — A Deterrent To Highway Accidents* (Vol 1969 No 10 Dec 1969).

<sup>38</sup>See, e.g., DRI Special Report, *Responsible Reform — A Program To Improve The Liability Reparation System* (Vol 1969 No 8 Oct 1969); Report of the American Bar Association Special Committee on Automobile Accident Reparation (June 1969).

<sup>37</sup>Frankfurter, J., in *Baltimore & Ohio R.R. Co. v. Kepner*, 314 US 44, 59 (1941).

<sup>38</sup>Senate Bill 8922, note 1 *supra* § 673.

<sup>39</sup>Internal Revenue Code § 104(a)(2).

earn so that the motorist who injures him can be free of responsibility. It leaves the auto accident victim disabled, in pain, and faced with a lifetime to consider the personal sacrifice he was forced to make to help lower the cost of insurance premiums for negligent and careless drivers. It seeks to lower the cost of insurance by denying

most people insurance benefits or by conditioning the payment of benefits upon a series of events which will rarely occur. This can only be considered as a meaningful solution to all the problems of automobile accident reparation if mercy killing is considered a meaningful solution to all injury, sickness and disease.

UNIVERSITY  
OF  
TORONTO  
LIBRARY

EXHIBIT E

**Fault**

**A Deterrent To Highway Accidents**



*To Increase the Professional Skill and  
Enlarge the Knowledge of Defense Lawyers*

VOLUME 1969

NUMBER 10

A Publication Of  
THE DEFENSE RESEARCH INSTITUTE, INC.  
*(A Non-Profit, Non-Stock Corporation)*

1212 W. Wisconsin Avenue



Milwaukee, Wis. 53233

This publication was made possible through the financial assistance of the following defense attorney organizations :

Association of Insurance Attorneys  
 Federation of Insurance Counsel  
 Alabama Defense Lawyers Association  
 Association of Defense Counsel (Northern California)  
 Association of Southern California Defense Counsel  
 Dade County Defense Bar Association (Miami, Florida)  
 Mississippi Defense Lawyers Association  
 New Jersey Defense Association  
 Defense Association of New York (New York City)  
 Defense Research Institute of Northeastern New York  
 Ohio Defense Association  
 Oklahoma Association of Defense Counsel  
 Tennessee Defense Lawyers Association  
 Texas Association of Defense Counsel  
 Washington Association of Defense Counsel (Seattle)

Requests for additional copies of this publication should be directed to :

**Defense Research Institute**

1212 West Wisconsin Avenue, Milwaukee, Wisconsin 53233

## FAULT

## A Deterrent To Highway Accidents

Edited By

Donald K. Ross, Information Director  
Defense Research Institute

## CONTENTS

FOREWORD .....	11
INTRODUCTION .....	1
SYSTEMS ANALYSIS APPLIED .....	2
INDIVIDUAL BEHAVIOR AND GROUP EXPECTATIONS .....	3
BASIS OF MODEL PARAMETERS .....	5
Parameter A .....	5
Parameter B .....	6
Parameter C .....	6
Parameter D .....	6
Parameter E .....	7
Parameter F .....	8
Parameter G .....	9
DETERRENT EFFECT OF FAULT SYSTEM .....	9
Generic Model Description And Its Confirmation .....	10
Application To Insurance System .....	12
DETERRENT EFFECT OF NO-FAULT SYSTEM .....	15
Personal Contacts Measured .....	17
MODEL EVALUATION OF FAULT AND NO-FAULT .....	19
Parameters Applied To Systems .....	20
CONCLUSION .....	24
FOOTNOTES .....	28

© THE DEFENSE RESEARCH INSTITUTE, INC., 1969

FOREWORD

Radical proposals have been made to recompense all persons injured in highway accidents regardless of fault. This attempt to meet a social problem would, if accomplished, weaken or destroy the legal system that has been erected so that citizens may gain justice through the orderly process of tort law.

In arriving at their conclusions, proponents of "no-fault" compensation have assumed that this major legal change could be made with no noticeable affect on the highway accident level because the liability insurance system has already removed the need for individual responsibility on the highways. This claim is made without supporting evidence. Such a rash assumption is not a reliable basis for change; nor can the lives of drivers and passengers be gambled in such a manner. It should also be noted that this revolutionary proposal flies in the face of common sense, public and legal values. The fault concept--that one who causes injury to another should fairly and adequately compensate him for that injury--has been and still is very much a part of public consciousness which finds its counterpart in the law of the land.

What is needed is calm analysis aimed at strengthening the values of the present system rather than their destruction. This analysis should be rooted in scholarship and marked by deliberate

application of knowledge to a great and growing problem--highway accidents which in 1968 alone claimed the lives of 55,000 persons.

Such research, enriched by personal experience of a specialist, has been completed and it provides definitive answers to fill the void left by mere common sense arguments. This work, "Psychological Aspects of the Fault System as Compared with the No-Fault System of Automobile Insurance," has been completed by Lawrence Lawton, professional engineer and traffic engineering consultant from Westchester, New York, under a grant arranged by the Defense Research Institute, Milwaukee, Wisconsin. This study is available from the Defense Research Institute. This summary, "Fault--A Deterrent To Highway Accidents," has been adapted from the original work of Mr. Lawton. Mr. Lawton holds a B.S.C.E. degree from the School of Engineering, College of the City of New York, has engaged in advanced studies in traffic engineering at Brooklyn Polytechnic Institute and has completed a Yale University seminar in application of computers to traffic engineering. A specialist in traffic safety and accident reconstruction, a traffic consultant since 1963 and author of numerous scholarly articles, Mr. Lawton has reviewed many hundreds of serious accidents, analyzed accident causes and determined measures to reduce or eliminate such accidents.

Gratitude is expressed by the Defense Research Institute to the following organizations of defense attorneys which aided in financing Mr. Lawton's research: Association of Insurance Attor-

neys, Federation of Insurance Counsel, Alabama Defense Lawyers Association, Association of Defense Counsel (Northern California), Association of Southern California Defense Counsel, Dade County Defense Bar Association (Miami, Florida), Mississippi Defense Lawyers Association, New Jersey Defense Association, Defense Association of New York (New York City), Defense Research Institute of Northeastern New York, Ohio Defense Association, Oklahoma Association of Defense Counsel, Tennessee Defense Lawyers Association, Texas Association of Defense Counsel, and Washington Association of Defense Counsel (Seattle).

In addition to spotlighting causes of many of today's highway accidents and suggesting their remedies in his complete study, Mr. Lawton has concluded that abandonment of the fault principle would increase highway accidents and thereby the number of deaths and injuries and costs to the American public. The Defense Research Institute has premised its opposition to radical change on the theory that fault is basic to the maintenance of a viable legal system of tort law and that removal of the fault concept in favor of a reparations system which would reward innocent and guilty equally would result in increased highway accidents with its resulting harm and death. The Lawton research supports this premise and buttresses the position that responsible reform of the existing system is the answer to the current concern over the increased cost of automobile accidents.

The Defense Research Institute  
Milwaukee, Wisconsin

December, 1969

## INTRODUCTION

If man truly observed the first so-called "law" of nature, self-preservation, and he were a totally rational rather than rationalizing animal, the need to study the fault principle and its deterrent effect upon highway accidents would be minimized. Man would do all possible to avoid trouble. Instead, there are many accidents involving factory workers, tailgating drivers, cigarette smokers, individuals who refuse to wear safety belts in their automobiles--to name just a few. Still, there are those who claim that the law of self-preservation is the main determinant of highway safety.

Law, both civil and criminal, is required to constrain man, particularly when his actions can involve others; this statement applies with equal force to laws of the highway and legal and extra-legal actions which follow breaking of those laws. However, it is not enough in this age of criticism to merely advance common sense arguments in support of retention of the fault concept. The value must be proved, if possible.

If our proved system of liability based upon fault is abandoned in favor of a plan that would reward guilty and innocent alike in highway accidents, the results of the new approach must be evaluated before it is enacted and not be left to predetermined whim and fancy. In the following study, the tech-

niques of systems analysis have been utilized to scientifically evaluate impact of the fault system and to predict the results if it were abandoned. It is confirmed that the present fault system maximizes deterrence of highway accidents and that deterrence in a complete no-fault system would be virtually nonexistent. In the study, a systems model based upon studies of individual behavior as related to the group has been formulated. The parameters, or factors, of the model are based upon empirical experimentation. These factors and their application demonstrate the important conclusions which can be drawn.

#### SYSTEMS ANALYSIS APPLIED

Systems analysis is an organized method of predicting the effects of change before a new system is initiated. The need is greatest in those areas which embody complex factors. At the heart of the process is the construction and use of a "model." In most instances the model is a simplified representation of the operation. For complex systems it is common to perform the analysis by using mathematical models. A model, in this sense, is a systematic description of the characteristics of a system. The utility of a model is determined by its accuracy as a tool for the prediction of change, not by the intricacy of its description.

The first step in formulating a model is to analyze the past behavior of the process. The basic behavioral character-

istics must be determined before any meaningful change can be made. A model may be constructed by using known experimental data. Its validity can be verified further by observing behavior of the system parameters, or factors.<sup>1</sup>

Certainly in determining whether a no-fault system should be adopted there is an urgent need for study and model formulation. It is not sufficient to say that future research may determine the relationship between accident frequency and deterrence. Before any change is made, particularly when such great risks are involved, the parametrics of the system must be identified. It cannot be rashly assumed that the adoption of a new legal system will have no effect on the safety of drivers, passengers and pedestrians.<sup>2</sup>

#### INDIVIDUAL BEHAVIOR AND GROUP EXPECTATIONS

This section reviews studies made of individual behavior as it relates to group behavior. Based upon those empirical observations, parameters of a model are formulated to test the deterrent effect of the present automobile reparations system. Factors (parameters) of controlled tests are arranged in a mathematical formula which clearly demonstrates that when one factor is varied the deterrent effect of the system to be measured will either be increased or decreased. Thus, the impact on highway accidents of the fault concept versus no-fault proposals can be clearly forecast.

Carefully fashioned studies have demonstrated that individual behavior is influenced by other human beings, the group. The term "group" is used generically to refer to people other than the individual being influenced.<sup>3</sup>

During early life a child begins to learn actively through the repetitive process called conditioning. Conditioning takes place through trial and error and by acquiring habits taught by parents. These habits are established by reward and punishment. The child makes an important discovery, his need to be loved. This need, based at first on self-love, becomes the foundation for later motives and cultural imperatives. The need for love and protection becomes in the adult, not only the basis of love between two persons, but the need for the approval of society. The man who wants to improve his social position, to obtain power, to possess a bigger and more expensive car, is acting in a way which is based on a child's need for love and his desire to be worthy of approval. True, the mother's approval is the child's group approval, but the fundamental motive is the same.<sup>4</sup>

The fact that individual behavior is affected by group expectations has been verified by many studies. Sherif, in his work at Columbia University, was one of the early pioneers in documenting the influences on the individual behavior. His carefully controlled tests involved 19 subjects in individual experiments and 40 subjects in group experiments.<sup>5</sup> The experiment was

set up to take advantage of the autokinetic effect. In a dark room, a small light would appear to move - even though it was stationary. The subject was asked to state the distance moved. Two different procedures were used. In the first series, the subject was brought into the group after first being experimented upon alone. In the second series, the subject was merely included in the group, without having prior individual experience. The subject was later experimented upon individually. It was found that each of the groups established its own range and norm (standard) at the first meeting. In subsequent sessions, the norms of individuals changed toward the common norm. Sherif proved conclusively that the individual's report of light movement was decidedly affected by the group norm. He pointed out that there was no "right" judgment and that participants felt uneasy until they were given outside judgment for guidance.

#### BASIS OF MODEL PARAMETERS

The results of Sherif's experimentation form Parameter A of the model.

PARAMETER A -- There is no "right" or "wrong" judgment.

Group judgment tends to conform to the norm established by the group.

Sherif found a quantitative as well as a qualitative effect. The reporting of the judgments of the other members of the group had cumulative effect. In other words, the effect on the sub-

ject's behavior was increased with each exposure to the group judgment. These results make it possible to formulate the second (B) and third (C) parameters of our model.

PARAMETER B -- An individual's behavior is influenced by group pressure.<sup>6</sup>

PARAMETER C -- The intensity of the influence on individual behavior is a direct function of the number of contacts between the individual and the group.

It was also determined that when a former group member later faced the same situation as an individual, he perceived the situation in terms of the norm that he carried over from the group. From this finding, the fourth parameter (D) can be stated.<sup>7</sup>

PARAMETER D -- The norm perceived by one's contacts with the group affects later individual behavior.

Another experimenter, Asch, has conducted a study involving 87 subjects, in which the yielding to group pressure was determined.<sup>8</sup> Each subject was required, in the presence of seven others, to match the length of a line with one of three unequal lines. The seven others were experimental confederates who had been instructed to make the same wrong response at various times. This presented the actual subject with a conflict between his senses and the responses of the group. Some three quarters of all the actual subjects showed errors in judgment in the direction of the estimates of the others. Asch found that the effect on the individual's behavior was much greater when the indivi-

dual was singled out. When standing alone, he yielded to group pressure in 32 percent of the total number of experiments. When a second member joined the actual subject in his disagreement with the majority, the individual yielded only eight percent of the time.<sup>9</sup> From these experiments, another factor in individual behavior can be derived, the fifth parameter (E).

PARAMETER E -- The intensity of the influence on individual behavior is increased when the individual is singled out by the group.

In a later experiment, Deutsch and Gerard also demonstrated that an individual's behavior is affected by his expectations of group beliefs.<sup>10</sup> The methodology was similar to that used by Asch. The same type of cards were employed. The initial set of experiments involved a face-to-face procedure in which the actual subject was in the same room with three confederates of the experimenter. In the second set, the subject and each of the three confederates were separated by partitions which prevented them from talking to each other or seeing each other. Panel lights were used so that the actual subject could see the determinations of the others. In one variation, the actual subject was aware that his judgments were known to the others. In the second, he was led to believe that the other subjects had no way of knowing his decisions.

These studies, like the Asch studies, proved that the group's influence on an individual's behavior is reduced when he is not singled out. This is a confirmation of Parameter E. (The in-

tensity of the influence on individual behavior is increased when the individual is singled out by the group). The studies also revealed that the group's effect on the individual was much greater in face-to-face contact.<sup>11</sup> We thus can derive a sixth factor which governs individual behavior, Parameter F.

PARAMETER F -- The intensity of group influence on individual behavior is a direct function of the degree of personal contact between the group and the individual.<sup>12</sup>

The final, and seventh, parameter of our model is provided by experiments conducted by Milgram on 160 male adults.<sup>13</sup> The focus of the study was the amount of electric shock the subject was willing to administer to a victim who was a confederate of the experimenter when an order was given. The subject was led to believe that it was an experiment which involved the effect of punishment on learning. It was found that whenever the victim was brought into the same room with the subject, the number of subjects obedient to the instructions of the experimenter, who remained in the other room, decreased. The conflict becomes more intense for the subject if the experimenter looks at the subject expecting him to continue, while the victim indicates his desire to quit. This result, in regard to an aggressive act upon an individual, may be considered to be an inverse corollary of Parameter F. The corollary may be stated as follows:

PARAMETER G -- The intensity of an aggressive action toward another person is an inverse function of the degree of personal contact between the aggressor and his victim.

#### DETERRENT EFFECT OF FAULT SYSTEM

Thus, parameters have been established as relevant to the relationship between the expectations of the group and individual behavior. These parameters were derived from the actions of subjects in experiments in which ordinates of human behavior were isolated. The independent effect of each factor was determined. The careful control of these experiments offers considerable confidence in the parameters. This confidence has been enhanced by the cross-checking of other investigators. These parameters allow comparison of the relative deterrent effects of the existing fault system and the proposed no-fault system. Before this evaluation is made, an examination must be made of elements of the current fault system to see if there is additional confirmation of the parameters.

Public opinion surveys have shown that the group believes that driver fault is a primary cause of automobile accidents. For example, the Harris Survey of December, 1966, determined the relative importance of individual fault and vehicle defects. The survey reported that by the overwhelming proportion of 96 percent, "the public is convinced that driver carelessness is

a far more important cause of highway accidents than manufacturer's defects."

Similarly, in 1968, the Minneapolis Tribune conducted a survey dealing with a proposed no-fault system of automobile insurance. One question was:

In highway accidents, do you think there is usually one person who is mainly to blame for the accident or are there many accidents in which no one person is more to blame than anyone else?

Sixty-nine percent said that one driver is usually more at fault, while 26 percent indicated a feeling that there are many times when no one party is particularly to blame. Five percent did not reveal an opinion.<sup>15</sup>

#### Generic Model Description And Its Confirmation

As has been explained, the purpose of a system model is to evaluate the effects of a proposed new system. Up to this point, seven detailed parameters have been described. For the present, an abbreviated model description is useful:

Accident deterrence is a direct function of the degree to which the community abhorrence of the causing of an accident is focused on the individual negligent driver.

This brief description of the model may be viewed as a generic parameter encompassing the structures of five of the detailed parameters (i.e., B, C, D, E and F).

In a carefully structured study, which confirms this generic model, Kaestner and Syring worked with driver improvement analysts to devise a motivationally oriented interview built around the individual driver's prior record.<sup>16</sup> It involved drivers with mild infractions, not those with serious or repeated charges. Drivers were randomly assigned to either an interview or control group of 660 persons each. Significantly more of those who were singled out for interview drove one year without a traffic entry. They also went longer before subsequent violations were observed. In the control group, 66 accidents were subsequently recorded, while there were only 50 accidents among the drivers who were interviewed.

Another significant experiment involved 30 violators divided into three equal groups.<sup>17</sup> One group received a simple warning. Another group attended a safety school. The third group participated in experimental sessions run by the experimenter who allowed the discussion to go wherever the members wanted, interrupted only when he heard a "rationalization." The six sessions, which had no time limit, lasted from half an hour to over three hours. In the following year, this third group had only half as many violations as each of the other two groups. Furthermore, among 23 reported accidents in the subsequent five years, only one involved a member of this third group. Needless to say, these results again confirm the validity of

the generic model--focus upon the individual brings results.

A third experiment again illustrates the importance of pointing the finger at negligent drivers.<sup>18</sup> Military authorities were troubled by the large number of automobile accidents involving servicemen in the vicinity of their stations. A study revealed that excessive drinking was a contributing factor in approximately two-thirds of these accidents. After rejecting various countermeasures, such as advance screening and counseling of drivers, a two-fold program was designed: A driver involved in an accident was called in to review his service record and for psychiatric examination. An accompanying educational effort portrayed driving after drinking as disturbed behavior. Accidents declined over 50 percent in the next year. Before concluding that the prevention program had been successful, Professors Barmack and Payne examined and rejected plausible rival hypotheses such as other influences operating in the same direction or a general decline in servicemen's accidents. During the period in question, accidents continued to rise in the general community and at other military bases.

#### Application To Insurance System

We have already demonstrated that there is a group norm in existence which holds that driver fault is the primary cause of automobile accidents. It is of interest to examine the work-

ings of the existing insurance system to see how this norm has permeated the mores of the community. It is of particular importance to examine the various mechanisms by which the finger of causative responsibility is pointed at the negligent driver.

Take the case of a collision accident in which there is no injury; ten out of every eleven accidents are in this category. It is at this significant stage, before he has done any serious harm, that the community abhorrence of the causing of an accident is concentrated on the individual negligent driver.

1. The drivers must of course exchange information as to operator's license and vehicle ownership. There is usually a discussion as to who caused the accident. Sometimes heated and bitter words are exchanged. Usually, neither driver will admit causative responsibility. Almost invariably the errant driver will maintain that, "It was the other fellow's fault." This falsehood must be asserted in the face of the true circumstances of which both drivers are usually well aware. This must be a considerable mental strain for the great majority of drivers who are not hardened and coldly calculating liars.

2. If a policeman shows up, there is another series of conversations. The negligent driver may again continue in his falsehood - this time to an officer of the law.

3. Each driver must then fill out his motor vehicle report, describing briefly the events leading to the accident.

Few people are willing to admit a violation of the rules of the road which caused an accident. The guilty driver, therefore, must fabricate when he describes his version in the first written report of the accident.

4. The negligent driver must continue this falsehood in greater detail, in a face-to-face encounter, when he gives his statement to his insurance company representative. Even with collision insurance, as Keeton and O'Connell point out, the collision insurer is concerned with fault. After paying damage to the insured vehicle (less any applicable deductible), the insurance company will, if the circumstances warrant, submit a claim against the other driver's insurance company.

5. A bad driving record will trigger a series of painful reminders to the negligent driver. Keeton and O'Connell point out that it becomes more difficult and expensive for a driver with a bad record to get liability insurance. Each time the negligent driver pays his increased insurance premium, he is reminded anew of his transgressions.

6. In a case of an injury or death, there is an intensive inquiry of the driver by the insurance company investigators. It is true that a small percentage of claims - between one percent and three percent - are tried to final judgment. However, it is quite clear that concern with fault affects the amount of compensation in those cases that are settled.

7. In the majority of cases with a serious injury, an examination before trial is held. The falsehood must now be carefully compounded. Here the errant driver is placed under the probing examination of a skilled attorney.

The lying witness is under a very real fear of humiliation. He cannot, in a display of disdain, refuse to answer the questions put to him. The answers, if they are based on falsehood, may well lead to mortification and dismay. There is great effort needed to avoid entrapment, and to sense the direction of questioning which may expose him. The mental exertion required, and the potential embarrassment of being trapped in a lie in the presence of others, can add up to an experience close to mental torture. The witness dreads it beforehand, usually suffers while undergoing it, and remembers it afterward with much distaste.

The seven steps which have been outlined above are the means by which the community's abhorrence of the causing of an accident is focused upon the negligent driver. These means are inherent operating mechanisms which come into being because of the workings of the current legal system with its continued emphasis on finding fault.

#### DETERRENT EFFECT OF NO-FAULT SYSTEM

The first highly publicized no-fault plan was proposed by

Keeton and O'Connell.<sup>19</sup> Under this limited plan, the present system would be retained in cases where claimed damages for pain and suffering exceeded \$5,000, or where claimed economic losses exceeded \$10,000. For accident claims which do not reach these limits, there would be a maximum payment of \$10,000. Payment would be made within this limit, without regard to fault, for all out-of-pocket losses. Such payment would be reduced by the amounts received from other forms of insurance carried by the particular individual. No payment would be made for pain and suffering.

A complete no-fault plan has been announced by the American Insurance Association whose members write 38 percent of all private automobile insurance. This plan would provide unlimited coverage, without regard to fault, for medical, hospital, and reasonable expenses incurred. Supposedly, there would be savings in eliminating the legal expense of finding fault. Expenses would also be cut by a reduction in the compensation now paid to non-negligent victims by eliminating any payment for pain and suffering or for economic losses exceeding \$750 a month, and an offset for amounts received from other forms of insurance and sick pay. The supposed savings are to be used in two ways. First, all injured parties are to be compensated (within the reduced limits noted above) irrespective of whether they were at fault. The proponents of no-fault also claim it

will be possible to reduce insurance premiums by 15 percent.<sup>20</sup>

Deterrence is effective to the degree that it prevents a future accident. It is imperative that the operating mechanisms in any proposed system act so that the causing of an accident maximizes the psychological impact upon the negligent driver even though no injury or major vehicle damage occurs to the instigator.

#### Personal Contacts Measured

In order to compare the deterrent value of the proposed no-fault systems, a list is presented of the contacts between the driver and the system operants. It is assumed that there is no injury.

1. Presumably, the drivers will stop and exchange information as to operator's license and vehicle ownership. The presumption is made although it is difficult to see what function this information could fulfill under no-fault. Since the accident will be attributed to a chance throw of the heavenly dice, there will be absolutely no need to discuss the causation of the accident. This face-to-face meeting, if indeed it would occur under a new system, should prove to be much more pleasant. There would be no accusations and of course absolutely no feeling of humiliation.

2. If a policeman arrives at the scene, he will not be concerned with the circumstances leading to the accident. Under

a new system, this would be a comparatively cordial meeting for the policeman and the two drivers.

3. The filling out of the motor vehicle report, if one is required under a new system, would occasion no particular difficulty. Since legal fault would not be a matter of either past or future contention, there would be no need for even the slightest apprehension in this respect on the part of the negligent driver.

4. The drivers would merely notify the insurance company of the accident. The company representative will not have the slightest concern with fault. In marked contrast to the old system, this would be a much more pleasant experience for the errant driver.

5. For the young driver with a battered jalopy, there would be relatively little expense for his insurance company for the property damage. There would be little chance of an increase in insurance rates. The same would hold true for the owners of heavy commercial vehicles.

6. Under the latest versions of the no-fault system, there would be no further contact with the driver which could possibly relate to causation. Concern with fault, under the limited no-fault plans, would start after the occurrence of a major injury. This would be akin to locking the barn door after the first

horse was stolen. But even then - how good would the lock be?

The limited no-fault plans might be thought to have some psychological deterrent value in regard to truck drivers after they have caused their first injury to the driver of a passenger car (a truck driver is almost never injured in a collision with a passenger car). The deterrent value is dubious because the abandonment of the fault principle, in all except the major injury accident, would diminish if not destroy the group norm which is now in existence in regard to accident causation.

#### MODEL EVALUATION OF FAULT AND NO-FAULT

All of the elements of the system model have been formulated in terms of the parameters which have been derived from and confirmed by the results determined by many different independent investigators. These parameters make it possible to evaluate the comparative value of deterrence which will ensue with changes in the system elements. The following formulation describes parameters of the system model in terms of a mathematical statement.

$$\text{DETERRENCE} = [A + B] \times \frac{[C \times D \times E \times F]}{G}$$

This mathematical statement is a convenient way to show the effect of each parameter upon deterrence. This statement may be likened to a fraction. An increase in quantity above the bar will increase the total value of the fraction and thus will in-

crease the deterrent effect. The fractional value, or deterrence, is lowered when the term below the bar is increased. For example, Parameter G indicates that the intensity of aggression increases as the degree of personal contact between the aggressor and his victim decreases, thus lessening the deterrent effect. On the other hand, Parameter C shows that intensity of influence on an individual's behavior grows as the number of contacts between the individual and the group increases. Increase the exposure to the group standard (Parameter A) and deterrence will be increased by group pressure (Parameter B).

#### Parameters Applied To Systems

It is now possible to evaluate the relative value of the parameters for both the existing and proposed systems.

Parameters A and B posit that an individual's behavior is influenced by group pressure, that there is no "right" or "wrong" group judgment, and that the group judgment tends to conform to the norm which is set up within the group. The law has a limited influence in shaping group beliefs and actions. As was discovered during Prohibition, the law is only effective to the degree that it reflects beliefs which have been established within the group. This principle was demonstrated in a study of vandalism among middle-class whites in the Bronx and Palo Alto.<sup>21</sup> In both cities, automobiles were left across the street from a

university campus, with raised hoods and without license plates. Hidden observers with cameras were placed nearby. In Palo Alto, the car was left untouched for more than a week. But within three days in the Bronx, as a result of 23 separate attacks, the car was reduced to a useless hulk of metal. Most of the attacks were in the daytime and were observed by one or more passers-by, who even occasionally stopped to chat with the looters. The adults were well dressed, giving every appearance of being responsible citizens.

The fault system, as has been demonstrated, constantly injects the group abhorrence of accident-causing driving into every minor and major accident situation. The belief in individual driver responsibility is almost entirely absent in the workings of the proposed no-fault system. As our system model indicates, deterrence will be diminished to the same degree that the belief in individual driver fault disappears among our citizens.

Parameter C posits that the intensity of the influence on individual behavior is a direct function of the number of contacts between the individual and the group. In both systems there are four contacts in the event of a minor accident. In the event of a series of minor accidents in the fault system, there are the additional contacts created by the increased liability insurance payments because of increased accidents attrib-

uted to the driver. If, for example, five payments are made per year, there will be 15 contacts in a three-year period. In the no-fault system these contacts will not be related, in the driver's mind, to his previous faulty driving behavior. Therefore, the increased number of contacts will have no effect on deterrence. Furthermore, if the vehicle in question is an old jalopy, there will be no payouts and consequently no increased payments. For the same reason, there will be no additional contacts for any heavy commercial vehicle - new or old.

In the event of a major injury accident, there will be many additional contacts under the fault system because of the various pre-trial investigations and extensive examination before trial. These contacts will not occur in the operation of a complete no-fault system. They would occur, however, under a limited no-fault plan.

Parameter D, that the norm perceived by the individual during his contacts with the group affects the individual's subsequent solo behavior, will be the same for both fault and no-fault systems.

Parameter E indicates that the intensity of the influence on individual behavior is increased when the individual is singled out by the group. The fault system determinedly singles out the individual in all stages of the system. A no-fault system does not single out the individual and his actions. Under a limited no-fault variant, the singling out occurs only after

a major injury accident.

Parameter F states that the intensity of the group influence on individual behavior is a direct function of the degree of personal contact between the group and the individual.

In the fault system, the degree of personal contact is maximized. Indeed, occasional physical altercations and bitter verbal exchanges as the result of a non-injury accident are common. In a complete no-fault system, the intensity of personal contact will be minimized. The value of this parameter in a limited no-fault plan will be somewhere between these two extremes.

Parameter G posits that the intensity of an aggressive act toward another person is an inverse function of the degree of personal contact between the aggressor and his victim. In the fault system, this parameter will come into effect with respect to potential accidents which may occur after the first accident, of any degree, caused by the aggressive negligent driver. In the complete no-fault system, it will never come into being. In a limited no-fault system, all non-injury accidents are attributed to random chance and thus this parameter will only be effective after a major injury accident.

Model evaluation of the individual parameters for fault and no-fault plans makes self-evident the combined effects. In brief, the fault system maximizes deterrence while the deterrent value of the complete no-fault system is virtually nonexistent. There is only a small amount of deterrence in the

limited variant of the no-fault concept. However, even this diminutive amount of deterrence is of questionable value since the finger of responsibility is pointed at the negligent driver after, not before, the devastating major injury accident.

#### CONCLUSION

With a systems analysis model applied to the relative merits of fault versus no-fault, it is apparent that a change from the present system would lead to increased accidents on our highways. Under fault, institutionalized methods of expressing the censure of the group serve to punish the faulty driver if he continues in his acts. Of key importance, these constant reminders of fault and imposing sanctions are triggered by even a minor accident. There is no such triggering mechanism in the proposed no-fault system. Here, there should be no hint of disapproval on the part of drivers; after all, under the new system, accidents would not be attributed to faulty, aggressive driving. Accident occurrence would be like the gentle rain which falleth from the heavens. Or, as the more sophisticated fatalists would have it--accidents would be little more than the result of random distributions of specific events in a complex social process.

Under a new system, an offending driver would proceed, without concern, from minor accident to minor accident, sooner or later precipitating a major accident which could result in serious

injury or death. Under no-fault, the aggressive truck driver need have no concern about his low factor driving behavior since both he and his heavy vehicle would have ample protection against injury and damage. But this would not be true for the other driver; his smashed vehicle and his mangled body will merely be another entry in the long list of random events occurring in our complex society.

In contradiction of some theorists who claim that since insurance carries the financial burden, fault no longer matters, we have demonstrated that the fault system is of paramount importance because it generates psychological deterrents which keep down the number of accidents. Furthermore, the present system has a built-in financial penalty which inhibits the negligent operation of vehicles. A succession of accidents will cause a large increase in automobile insurance premiums, lower limits or cancellation.

Proponents of no-fault also contend that the criminal law would still exist and that this deterrence would be sufficient. But most of us are well aware that serious criminal penalties result from only a small proportion of all major accidents. In addition, few of us believe that we will be involved in a major accident. Consequently, the deterrent value of a possible future criminal prosecution is remote. A change to a no-fault

concept also would have a decided effect upon police enforcement. Policemen, who are neither saints nor ogres, are busy people burdened with a tremendous number of responsibilities. Many are extremely reluctant to enforce traffic regulations which they consider to be unreasonable or unnecessary. If no-fault were adopted, accident causation would eventually be ascribed to the blind workings of the law of chance--the result of bad luck and not faulty actions of drivers. Since driver fault would be of small importance in causing an accident, police would turn their attention to more demanding problems. A drastic drop in police enforcement of traffic laws would be the inevitable result of any future abandonment of the fault concept.

Independent surveys show that the fault concept is an established group norm, that most people believe that driver fault is the primary cause of automobile accidents. Separate studies also show that when the individual negligent driver is singled out, there is a significant drop in his subsequent accident experience. These studies also show that the more determined the effort, the greater the reduction in accidents. It is also clear that community censure at the significant stage of the minor accident will aid in prevention of those which are major in nature. Studies also support common sense in another way -- aggression will seek out the lowest level of retaliation and will continue to stalk those victims against whom a display of -

aggression will meet with a minimum of reproof. Aggressive drivers meet opposition under the fault system; there is no opposition under no-fault.

Extensive research, therefore, indicates that adoption of a no-fault insurance system would substantially increase the frequency of major automobile accidents. On the other hand, a significant reduction of accidents can be achieved if both individuals and groups accept a higher degree of responsibility for highway safety within the present system.

## FOOTNOTES

- 1 This can be accomplished by amplification. A good example is the operation of a triode vacuum tube circuit. An increase in the grid bias (a greater negative charge), will decrease the flow of current in the circuit. The decreased current activity confirms the blocking effect of the negative grid bias.
- 2 Vernon, Systems Analysis In Contemporary Police Management at 6 (Traffic Digest 6 Rev April, 1969)
- 3 For example, Deutsch and Gerard define a "normative social influence" as an influence to conform to the positive expectations of others. Positive expectations refer to those expectations whose fulfillment leads to or reinforces positive rather than negative feelings and whose non-fulfillment leads to the opposite, to alienation rather than solidarity. A Study Of Normative And Informational Social Influences at 402-11 (Basic Studies In Social Psychology 1965)
- 4 Brown, Techniques Of Persuasion at 45 (1963)
- 5 Formation Of Social Norms: The Experimental Paradigm at 461-71 (Basic Studies In Social Psychology 1965)

6 Another experiment verifying this parameter was performed by Crutchfield. (Conformity And Character at 398-408 (Current Perspectives In Social Psychology 1963).) Five persons were seated in individual booths facing a signal board. The experimenter faked, for each person, the judgments of the other group members concerning the lengths of lines. The experimenter did this in order to deliver unanimously wrong group judgments to each person. (See Krech, Crutchfield & Ballachey, Individual In Society at 508-9 (1962).) The subjects were 90 men actively engaged in a business in which leadership was a salient expected qualification. These men represented a gathering of superior individuals who could be expected to readily withstand group pressure. A control group of 40 men were used. The other 50 were tested as above described. The results were startling. There was a capitulation to group pressure ranging from 30 to 79% in the situations presented.

7 Ibid

8 Effects Of Group Pressure On Judgments at 393-401 (Basic Studies in Social Psychology 1965)

9 Ibid

- 10 Note 3 supra
- 11 Ibid
- 12 Further confirmation of Parameter F was a study at the Hawthorne plant of the Western Electric Company. (Kimble, Principles Of General Psychology at 331-332, 352 (1956).) An economic incentive plan gave individual workers a bonus. No increase in production occurred. Next, six workers were selected. They worked under the following sequence of conditions:
- (1) Control condition: Two weeks work in the regular shop under normal conditions.
  - (2) Adaptation period: Five weeks work in a special test room with working conditions otherwise the same as in the shop.
  - (3) Change in the system of payment.
  - (4) Two five-minute rest pauses each day.
  - (5) Rest pauses lengthened to ten minutes.
  - (6) Six five-minute rest pauses.
  - (7) Light lunch served morning and afternoon.
  - (8) Work day reduced by one-half hour.
  - (9) Work day reduced by full hour.
  - (10) Conditions returned to condition 7.
  - (11) Work week cut to five days.
  - (12) Return to condition 3.

Throughout the experiment the rate of production continued to increase. The experiment was structured so that the workers were asked for their comments after each change. They felt management was interested in them. This illustrates the importance of personal contact as set forth in Parameter F. Furthermore, the continued improvement in production, irrespective of the nature of the change, again demonstrates the validity of Parameter C, that behavioral change is a direct function of the number of personal contacts. (See Lewin, Group Decision And Social Change at 427-28 (Basic Studies In Social Psychology 1965) which also confirms Parameter F.)

- 13 Milgram, Some Conditions Of Obedience And Disobedience To Authority at 243-62 (Current Studies In Social Behavior 1965). See also Gamson, The Management Of Discontent 549-50 (Social Psychology 1969) for a summary. Other data from these experiments demonstrate the great influence of the physical presence of the experimenter, confirming again the validity of Parameter F.
- 14 Moynihan, Report Of The Secretary's Advisory Committee On Traffic Safety, at xiii, 38, 82, 101 (1968)
- 15 Sixty Percent Would Keep Auto Liability, (Minneapolis Tribune), Sept. 8, 1968

- 16 Pelz, Driver Motivations And Attitudes at 105, 110, 114, 116, 117 (2d Annual Traffic Safety Research Symposium 1968).  
Similar conclusions were reached in a companion experiment with letters personalized to varying degrees. Those receiving soft-sell personal letters had better subsequent traffic records.
- 17 Ibid
- 18 Cramton, Driver Behavior And Legal Sanctions at 186-87 (2d Annual Traffic Safety Research Symposium 1968)
- 19 Basic Protection For The Traffic Victim at 252, 253, 255, 368, 530 (1965)
- 20 Morris, New Car Insurance Would Drop Liability System (New York Times Oct 22, 1968)
- 21 Burnham, Psychologist Says Pressures Of Big City Life Are Transforming Americans Into Potential Assassins (New York Times April 20, 1969)

## EXHIBIT F

## CURRENT STATUS - AUTO REPARATION LEGISLATION

Alaska	H25 & S47 (American Insurance Association Plan)
Arizona	H217 (American Mutual Insurance Alliance Plan) H316 (Modified Massachusetts Plan)
California	H117 (American Insurance Association Plan) S38 (Mandatory Medical Payments Coverage) S515 (American Insurance Association Plan) H1030 (Modified Massachusetts \$5000 first party) S623 (State Commission to decide auto accident damage claims)
Colorado	H1221 (Insurance Company of North America Plan) H1357 (Rockefeller-Stewart Plan) H1483 (Insurance Company of North America Plan)
Connecticut	S571 (Modified Massachusetts Plan) S765 (Modified Massachusetts Plan) S899 (Travelers Plan) S702 (American Insurance Association Plan) H1048 (Modified Cotter Plan) S1092 (Modified Rockefeller-Stewart Plan) H7558 (Compulsory First Party Coverage) S553 (Legislative Study of Auto Reparations) H8772 (Modified Cotter)
Delaware	H4 (Insurance Company of North America Plan) H90 (American Insurance Association Plan) H133 (Modified Massachusetts Plan)
Florida	H65 (American Insurance Association Plan) H168 (Keeton-O'Connell Plan) S320 (Modified American Insurance Association Plan) H322 (Keeton-O'Connell Plan)
Hawaii	S244, H115 & H181 (American Insurance Association Plan) H67 (State monopoly on auto liability insurance) S713 & H800 (Modified Massachusetts Plan) H330 & S1279 (American Insurance Association Plan)
Idaho	S713 (?) HCR4 (Legislative study of auto reparation)
Illinois	S263 - S270 (Cotter Plan) ? - ("Illinois Plan" - Modified National Association of Independent Insurers Plan)
Indiana	S640 (National Association of Independent Insurers Plan) H416 (Keeton-O'Connell Plan)

**Kansas** S162 & H1356 (American Insurance Association Plan)  
HCR1037 (Legislative study of auto reparation)

**Maryland** H151 (Massachusetts Plan)  
HJR27 (Legislative study of auto reparation)

**Massachusetts** H387 (?)  
H2628 (No-Fault Property Damage Coverage)

**Michigan** S4 (Keeton-O'Connell Plan)  
H4734-37 (Modified Cotter Plan)

**Minnesota** S568 (American Insurance Association Plan)  
H1596 (Cotter Plan)  
S1737 (Modified National Association of Independent Insurers)

**Missouri** H586 (American Trial Lawyers Type Reform Package)  
H924 & H953 (Modified Massachusetts Plan)

**Montana** H451 (American Insurance Association Plan)  
HJR29 (Legislative study of auto reparation)

**Nebraska** LR7 (Legislative study of auto reparation)

**Nevada** S301 (American Insurance Association Plan)

**New Jersey** A2302 (Modified Keeton-O'Connell Plan)

**New Mexico** H135 (Puerto Rico Plan)

**New York** S4850 (Rockefeller-Stewart Plan)  
S5792 (American Insurance Association Plan)  
S4400A (Modified New York Agents Plan)  
A2861 (Modified Rockefeller-Stewart Plan)  
? (New York Agents Plan)

**North Dakota** S2479 (Modified Rockefeller-Stewart Plan)  
SR4028 & 4029 (Legislative study of auto reparation)

**Ohio** H381 (No-Fault Property Damage)

**Oklahoma** H1270 (American Insurance Association Plan)

**Oregon** H1300 (American Mutual Insurance Alliance Plan - 1st party only)  
H1851 (American Insurance Association Plan)  
SJR19 (Legislative study of auto reparation)

**Pennsylvania** H37 (Constitutional Amendment to allow no-fault)  
H542 (Modified Massachusetts)

**Rhode Island** H1470 (Massachusetts Plan)  
S667 (Modified Massachusetts)

**Texas** HCR110 (Legislative study of auto reparation)

**Washington** H230 (National Association of Independent Insurers -  
1st party only)  
H696 & S581 (Legislative study of auto reparation)  
S674 (American Insurance Association Plan)

**West Virginia** S423 (Modified Cotter Plan)

**Wisconsin** A373 (Modified Massachusetts Plan)

EXHIBIT G

# JUSTICE IN COURT AFTER THE ACCIDENT

**a positive program for its  
retention and improvement**

*a special report by*

**The Defense Research Institute  
The International Association  
of Insurance Counsel  
The Federation of Insurance Counsel  
The Association of Insurance Attorneys**

**The Defense Research Institute  
1212 West Wisconsin Avenue  
Milwaukee, Wisconsin 53233**

**President: John M. Moelmann  
Chicago, Illinois**

**The International Association  
of Insurance Counsel  
229 East Wisconsin Avenue  
Milwaukee, Wisconsin 53203**

**President: Egbert L. Haywood  
Durham, North Carolina**

**The Federation of Insurance Counsel  
1211 Public Service Building  
Portland, Oregon 97205**

**President: John Gordon Gearin**

**The Association of Insurance Attorneys  
52 East Gay Street  
Columbus, Ohio 43215**

**President: John C. Elam**

Requests for additional copies of this publication  
should be directed to: Defense Research Institute,  
1212 West Wisconsin Avenue, Milwaukee, Wisconsin  
53233.

## TABLE OF CONTENTS

	Page
Foreword .....	3
I. Introduction .....	5
II. Court Congestion and Delay .....	6
1. A Problem for the Legal Profession .....	6
2. Congestion Localized in Few Large Urban Areas .....	6
3. Highway Safety .....	7
4. Claim Growth .....	9
5. Efficient Use of Legal Effort .....	10
6. Need for Public Support .....	11
III. Insurance Economics .....	12
1. Need for Insurance .....	12
2. Automobile Insurance Losses .....	12
3. Cost Savings .....	14
IV. Legal Ethics and Economics .....	14
1. Inflation .....	14
2. Ethics .....	15
3. Defense Economies .....	16
4. Judicial Improvement .....	16
V. The Public Image of Courts and Juries .....	18
1. Need for Public Information .....	18
2. Cost of Jury System .....	18
3. Juries and Delay .....	19
4. Jury Verdicts .....	19
5. Jury Composition .....	19
6. Judicial Quality .....	20
7. Legislative Pressure .....	20
VI. The Public Image of Casualty Insurance .....	21
1. Need for Public Information .....	21
2. Criticisms of Present System .....	21
3. Modern Insurance Developments .....	23
VII. Research and Statistics .....	24
1. Claim Amounts .....	24
2. Counsel Fees .....	24
3. Claim Costs .....	25
4. Accident Cost Statistics .....	25
5. Fault Impact .....	26
VIII. Conclusion .....	26

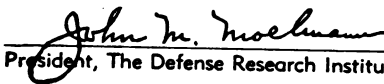
## FOREWORD

Criticisms of the present adversary-jury system of determining liability based on fault in lawsuits arising from automobile accidents, and the funding of the results by private insurance, have caused the governing boards of the Defense Research Institute, the International Association of Insurance Counsel, the Federation of Insurance Counsel and the Association of Insurance Attorneys to study those criticisms. The study results in the firm conclusion that every litigant is entitled to a fair trial in a court of law and to have his case presented by his attorney according to rules of law.

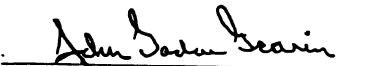
The objective of law and court trial is to attain the nearest human approximation of truth. Such an end is most likely to be gained by contest where opposing attorneys, committed to the causes of their clients, present the best possible evidence for consideration by jurymen who reach decisions through argument and counter-argument. Such a fundamental process should not be replaced by some system of compensation which rewards all injured regardless of fault. The moral principle of reward for good and punishment for wrong is universally accepted and justifiably so. This principle should not be weakened. Administrative decision which determines the rights of litigants is not an adequate substitute for the thorough means provided by the courts. Such a substitution can only be expedient rather than remedial and would be recognized as an omen of governmental rule which is not the path of a free people with full rights based upon Constitutional guarantees.

This paper is not a plea to maintain the status quo. Change is an inevitable feature of the Twentieth Century. Therefore, if threats to the adversary system are to abate, they must be countered by positive action programs rooted in defensible principles. This Positive Program paper sets

forth such principles, the implementation of which calls for dedicated effort of the legal profession, the insurance industry, the business community, the legislatures and the public. Need of such implementation is urgent; freedoms and rights, once lost, are difficult if not impossible to regain. To this end, the undersigned pledge themselves and their organizations to a continuing program of improvement in the administration of justice.

  
President, The Defense Research Institute

  
President, International Association of Insurance Counsel

  
President, Federation of Insurance Counsel

  
President, Association of Insurance Attorneys

January, 1968

4

## JUSTICE IN COURT AFTER THE ACCIDENT

### A Positive Program For Its Retention And Improvement

#### I. INTRODUCTION

This position paper, issued in the public interest, supports retention and improvement of the adversary-jury method of determining civil disputes in common law courts with liability based upon a finding of fault. Trial by advocacy, defined as putting issues to the proof by attorneys who plead or defend the causes of their clients, is favored. This system has served our civilization well. Its troubles are not inherent; they are peripheral. Some of its problems result from:

1. A growing population and expanding economy;
2. Growing claims consciousness, resulting in an excessive number of nuisance cases;
3. Unwarranted refusal to settle meritorious cases;
4. Questionable tactics to secure large and undeserved awards as damages;
5. Public and legislative apathy to existing problems, notably insufficient judicial personnel, inadequate court facilities, and failure to enact adequate traffic safety programs.

In this position paper it is suggested that evolutionary not revolutionary means will supply the answers. The aim is to stimulate public and private agencies to positive action programs, aided by lawyers and judges whose skill and experience can supply guidance and leadership.

5

## II. COURT CONGESTION AND DELAY

### 1. A Problem for the Legal Profession

The Bench and the Bar have the primary responsibility for completing studies and introducing changes and innovations needed to relieve existing court congestion. They are qualified to streamline court procedures and to expedite the disposition of litigation in all areas. They must give needed leadership.

### 2. Congestion Localized in Few Large Urban Centers

Court congestion and court delay are related but not identical conditions. Court congestion exists in a few large metropolitan centers where inadequate facilities, insufficient personnel and some reluctance to face the problem are principal causes. Court delay exists wherever inefficiency or indolent disregard for responsibility allows court procedures to be mismanaged.

Initial studies should first pinpoint the cities which have unseemly delay, should determine the volume of personal injury cases compared to other types of cases, and should ascertain if court practice defers personal injury lawsuits in favor of trying other actions, criminal or civil. In addition, to gain a clear picture of possible court congestion, revamped statistical methods of measurement should be employed. These include: (a) Measuring time from certification of readiness for trial by opposing attorneys rather than from the filing of a lawsuit; (b) Discarding the use of a national average since only a few urban areas have delay, some locales have modest time lapses between certification and trial, but most are disposing of litigation within a reasonable time; and (c) Viewing delay in any area in the light of rules that allow hardship cases to be advanced for trial.

Court congestion, where it exists, can be eliminated by the following measures:

- (a) Providing one judge for every 50,000 of population.
- (b) Employing more scientific methods in trial courts (e.g., use electronic data processing systems to speed progress of cases on the trial dockets).
- (c) Stressing to the public and their legislative bodies the dangers of "business as usual" in courthouses that are too small, inefficient, inadequate, understaffed and lacking in judicial facilities. Additional public funds are needed to correct such conditions.
- (d) Utilizing other remedies discussed in this paper (e.g., efficient use of legal effort and better court administration. See page 10, section 5 and page 16, section 4).

To relieve delay and congestion, the strengths of all legal bodies are needed to design programs for improvement of the adversary-jury system rather than dissipating those strengths through seeking answers in new, untried and patently weak systems.

### 3. Highway Safety

In addition to the tragic loss of human life, public disregard of highway safety is also a principal contributor to growth in accident claims and resulting court congestion. The following are recommended:

- (a) Lawyer groups at the state and municipal levels should act as specialists to reduce highway accidents. Pertinent are recommendations to improve court practices regarding driving offenders and repeaters; provisions for better licensing; laws which aid the obtaining of evidence, such as implied consent when drunken driving is suspected; and more effective enforcement of laws governing drivers. Uniform state

traffic laws are needed in this age of extensive travel.

Political failure of highway safety programs, which has been the record to date, can be reversed when such programs are actively promoted and supported by influential citizens, the judiciary and the legal profession.

- (b) Since the insurance industry is spending millions of dollars on highway safety, it should tell its story more fully to lead state legislatures and citizens' groups to solutions which would reduce the toll of deaths and injuries. Highway accidents also cause larger insurance losses, directly increasing the amount of premium dollars that come from the pocket-books of family car owners who provide the pool of insurance dollars.
- (c) Fine programs of highway safety have been and will be devised, but when disregarded by the public and the enforcement agencies of government, the slaughter continues. Legislators, assuming their proper roles as makers of governmental rule, must enact laws that are enforceable and will be enforced. The chief executive of a state can be the key to priming a safety program which leads to legislative action. Through him suitable public support may be gained when joined with the publicity of citizens' organizations.
- (d) To date, much emphasis has been given to faults of the machine. Although automobiles and highways need improvement, statistics plainly show that the main cause of highway accidents is the driver. The following need stress in any highway safety program: (1) Driving is a privilege; not a right; (2) Uniformity and more rigid licensing standards are needed, including periodic physical examinations, driving tests and car inspections; (3) Adequate numbers of

trained officers are required to police efficiently; and (4) Rigid enforcement by the judiciary must complement police action to curb violations of traffic laws. Removal of unqualified drivers and law violators from our highways can be accomplished only through full cooperation of our courts.

- (e) Action is demanded to gain proper financing for highway safety. State and local governments now divert highway user revenue to non-traffic purposes. Safety functions, not road construction and maintenance alone, must gain adequate funding.

#### 4. Claim Growth

As the population and the economy have grown and the number of motor vehicles in use has expanded, the number of accident claims has increased proportionately. Claims consciousness has also developed; with it have come those who believe that if one's person or property is injured, someone else ought to pay, regardless of who caused the loss. Also, in a few areas of law, the concepts of strict liability and liability without fault have been blessed by some courts.

To meet these conditions, it is the responsibility of the Trial Bar to gain fair and just compensation for deserving claimants, based on the established legal principles of liability only as a result of fault. Claimants and their counsel must realize that one who has suffered harm may press his claim to the full amount of his actual loss, but he has no right to demand or obtain more. Defendants and their counsel must be willing to make prompt and reasonable payment for every valid claim where liability exists. All must work together to expedite court proceedings and to eliminate unreasonable delays. The following are suggested:

- (a) Through plaintiff and defense attorney cooperation, the utility of settle-

ment discussions can be increased vastly. "Bargaining" positions ridiculously above or below a fair compensation figure waste time and effort.

- (b) False or exaggerated claims presented by clients should be discouraged promptly in the attorney's office.
- (c) When it is shown that non-meritorious suits have been filed, court rule or legislation should assess costs and attorneys' fees against either the unsuccessful plaintiff or his attorney. When defendants engage in like tactics, a similar result should follow.
- (d) If fraud or perjury are discovered during trial, the judge who is responsible for discipline in his court should refer the facts to the Bar Association having jurisdiction to discipline counsel involved, and to the District Attorney for the prosecution of witnesses where appropriate. It is also hoped that the medical profession, through its national and local organizations, will invoke disciplinary measures when fraud and perjury are discovered in medical testimony, reports and fees.

#### 5. Efficient Use of Legal Effort

To further reduce time lost and to improve the efficiency of the courts, there are various considerations for lawyers and judges that are pertinent to court delay and court congestion:

- (a) Judicious use of pre-trial and expanded use of pre-suit offers of judgment, with appropriate sanctions for nonacceptance, would eliminate many trials.
- (b) Time and effort would be saved if trial courts would develop a firmer attitude in granting motions for summary judgments, directed verdicts and nonsuits when warranted. Appellate courts should encourage trial

judges to exercise independent judgment in these areas.

- (c) Programs should be devised by the Bench and the Bar to relieve case overload of both plaintiff and defense law firms so that trials are not delayed by a shortage of trial lawyers.
- (d) Judges and lawyers might well seek information from qualified experts in order to update court practices and to apply modern scientific knowledge to court procedures.
- (e) Courts should make greater use of university graduates schooled both in business and in law to act as court administrators.
- (f) Lawyers could be used as "bar proctors" to work with judges to schedule and expedite trials.
- (g) Overlapping and inefficiency of some court systems can be relieved by effective planning (e.g., the administrative assignment of cases and judges according to existing workload, and making use of judges from less busy courts in rural areas to relieve urban court pressures).

#### 6. Need for Public Support

The common law system of an independent judiciary and jury trials in civil litigation have functioned well for centuries and deserve total support. But **deserving** public support and **having** public support are not the same. Such support may be enlisted through the following:

- (a) Judges should not need to depend upon political fortune to gain and retain office. Legislation is needed to free them from politics and to insure that the selection process is not politically "tainted." The public requires assurance that the most competent and honest men have been elevated to the bench.
- (b) Every citizen should be reminded of the value of the jury system to so-

ciety and encouraged to serve as a juror when called so verdicts will truly be by one's "peers."

- (c) News media should tell the public of the history and method of operation of our courts, the judiciary and the American system of administering justice.

### III. INSURANCE ECONOMICS

#### 1. Need for Insurance

In our private enterprise system, casualty insurance is necessary both for the individual and for his business ventures; without insurance, free enterprise could not exist. A healthy insurance industry is essential to our economy. No man can guard against all of today's threats to his financial security. Insurance provides the necessary protection for him and his family and shields him from catastrophe.

American business, now in the most evolutionary period in history, is bringing new products to the market each day and is engaged in multi-billion dollar programs of research and development. In this space age, the insurance industry plays a most important role in protecting the manufacturer against losses resulting from his new products and developments. For the businessman or any individual, premium costs have a direct relationship to loss experience.

The public will lose if casualty insurance is not available or premiums are too high. It is in the public interest that the casualty insurance industry continues to function, earns a fair profit and maintains its proper place in private enterprise.

#### 2. Automobile Insurance Losses

Since 1955, casualty insurers have faced losses in the automobile bodily injury field and have been hard pressed in the automobile property and physical damage

areas. For 13 consecutive years, stock companies alone have recorded statutory losses of about \$1.5 billion on \$25 billion automobile bodily injury premium volume. Fighting for survival, insurance leaders are seeking remedies to reduce exorbitant losses and costs. Some leaders are interested in suggested alternatives to the adversary-jury system for dealing with automobile accidents, seeking both reduced defense costs and lesser claim payments.

A well publicized scheme of automobile compensation entitled "Basic Protection for the Traffic Victim" would reward injured parties, regardless of fault, up to \$10,000 for a single accident, with recovery for pain and suffering only when it exceeds \$5,000 in value. Fair analyses of this and earlier proposals reveal that they are unsatisfactory and inequitable to both the motoring public and the injured person.

In an attempt to find solutions to increasing costs, one insurance group is experimenting with a plan that offers a choice—coverage which provides guaranteed benefits up to a stated amount, or an alternative plan, which relies upon the fault concept for relief of damages. Such a plan, once adequately tested, can then be evaluated against the present system.

The sponsors of this paper doubt that the public would accept a system arbitrarily restricting injured claimants to recovery of their actual out-of-pocket wage and medical losses, or less. People expect some payment for the inconvenience and discomfort of being injured, especially in accidents caused by persons who break the law or drive carelessly. The principle that people ought to be held responsible for their wrongdoing is deeply ingrained in the public sense of justice. Similarly, the principle that one who is free from fault should be liable to one whose fault caused his own injuries is foreign to both moral law and modern thought. The fault concept is not outmoded.

### 3. Cost Savings

While the casualty insurance industry faces economic problems in the automobile tort field, economies and cost-saving programs are presently within the control of the industry itself:

- (a) Economic advantage lies in resisting non-meritorious claims. Court congestion and delay will be reduced. Payment of "nuisance" claims leads to an epidemic and may deny the conscientious plaintiffs' attorney the choice of advising a client that his claim is worthless for fear that the client will seek another lawyer who is less scrupulous.
- (b) To better serve the public, costly inter-company disputes could be resolved by arbitration rather than litigation. Such programs employing skilled and trained professionals are available.
- (c) The advice and assistance of defense lawyers can improve "in service" training programs for claimsmen, agents and investigators so that they become more efficient and effective.
- (d) Through frequent and adequate communication with defense counsel regarding the problems of insurance management, mutual understanding and problem solving could be improved.
- (e) Public relations activities can be coordinated to develop a proper public attitude toward the growing number of unmeritorious claims and could "spot light" the true nature of suggested "reforms" which are actually inimical to the insuring public.

## IV. LEGAL ETHICS AND ECONOMIES

### 1. Inflation

Inflation is not limited to goods in the supermarket where it is readily noticed by

the buying public. Inflation affects costs of defending accident claims which are suspect or without merit, in terms of investigation, insurance personnel, defense lawyer fees and trial costs. Such costs are paid by the premium-paying public.

### 2. Ethics

As officers of the courts, lawyers have a professional responsibility to make every lawsuit a search for justice. They have a duty to encourage fairness, reasonableness and moderation on the part of courts and juries. Any legal philosophy that is entirely one-sided is irresponsible.

The American Bar Association Canons of Legal and Judicial Ethics provide reasonable professional guidelines for lawyers and judges and should be effectively enforced by Municipal and State Bar Associations and the Judiciary. Without adequate enforcement, a great profession will fall into disrepute, heavier burdens will be imposed upon the courts, and the public will suffer.

Contingent fee abuses relating to the "brokering" (fee-splitting) of cases among lawyers and the continuation of "ambulance chasing" are subjects which require constant attention from the organized Bar. Through such activities, unfair advantage may be taken of injured persons and target defendants. Unethical practices should be eradicated to assure that the injured party receives just compensation for his loss. Full disclosure of the fee-splitting arrangements and the judicial regulation of contingent fee contracts are essential to prevent abuse and the possible victimizing of the injured claimant.

The practice of demanding exorbitant amounts in the initial *ad damnum* pleading should be curbed. Such practice influences public opinion and thus the minds of both present and future jurors.

Cases should not be decided by a judge's individual sense of "social justice." Judicial "legislation" resulting in decisions not

based on common or statutory law, provokes litigation and renders justice uncertain.

### 3. Defense Economies

Attorneys admittedly owe diligence to their clients, but in the interests of economy not all cases demand exhaustive measures. Suggestions for more efficient use of legal effort include:

- (a) "Run of the mill" cases should be handled expeditiously and with as little expenditure of time as is possible, consistent with sound legal practices. Fees and costs of handling are important factors in reducing overall case costs.
- (b) Discovery procedures, depositions, medical examinations and other pre-trial preparations should be adapted to the needs of each case, not used indiscriminately or routinely.
- (c) Defense counsel are obliged to be aware of services that are available to reduce defense costs (e.g., DIO Brief Bank) and to make use of such facilities.
- (d) Closer coordination among defense counsel, home office counsel and claims adjusters as to when claims should be settled, resisted, or advanced for trial can increase efficiency.
- (e) To improve efficiency and the efficacy of their service, defense lawyers need to be fully informed of the latest significant decisions and the newest trial techniques. Membership and participation in the work of defense groups on local, state and national levels is essential.

### 4. Judicial Improvement

A lawsuit's purpose is to ascertain truth and to do justice. The trial judge has a leadership role which, if undertaken and

performed, will improve the quality of justice obtained in his court.

The work of the trial lawyer includes more than representing his client in a particular case, and the work of the trial judge involves more than just presiding at a trial. Organization and administration of the court, assignment and expediting of cases, conducting pre-trials as well as trials, studies and conferences as to procedural improvements—these and many other duties are included in a judge's work.

There is probably no practical way to train lawyers to be judges, but the judges themselves have recognized that methods are required to train them to be better judges. Continuing education for trial judges and opportunities to stay abreast of current developments should be readily available. The work of the National College of State Trial Judges is an excellent beginning, but much remains to be done. These approaches are suggested for consideration:

- (a) Flexibility in reassigning judges should be maintained to meet the demands of case loads.
- (b) Where delays exist, state and local bar associations should recommend actions pertaining to the work of judges, the number of days that courts should be closed, and length of judicial vacations. Unreasonable variances should be eliminated.
- (c) Legislation should provide adequate salaries for judges to attract top talent to these offices. Adequate pensions should be arranged so that compulsory retirement at an appropriate age will be equitable.
- (d) Procedures should be provided for ready removal of judges who refuse to perform their duties or who become incapacitated.
- (e) Capable court administrators assigned to multi-judge courts can improve efficiency of the judicial process

without adding more judges in every instance. This practice, used in some areas, needs to be expanded.

## V. THE PUBLIC IMAGE OF COURTS AND JURIES

### 1. Need for Public Information

Judges and lawyers must constantly scrutinize their own work and try to improve it, but should remain aware that negative criticisms, not accompanied by positive programs, will cause negative reactions outside their immediate circle. It is difficult for the public to applaud a system which is decried by those charged with the responsibility for its operation. However, to date there has been no public outcry against the adversary-jury system. The public recognizes the value of courts, lawyers and judges and the moral values for which they stand.

It is important, therefore, that trial lawyers who understand the adversary-jury system present information programs for laymen and other lawyers so that this trust and confidence continues. Such programs should be straightforward explanations of our system of jurisprudence and should delineate the public significance of adversary-jury trials. Public participation in improving court operations should be encouraged, with adequate leadership supplied by those who are knowledgeable.

### 2. Cost of Jury System

Some contend that juries are too costly. They claim that the longer trial time involved in jury cases increases the expense for litigants and the public. Facts do not support this charge. For example, in the fiscal year ending May 31, 1967, jury expense amounted to only 13 percent of the total cost of the New York State judicial system.

Fundamentally, the cost of justice should not be the yardstick for its effectiveness,

unless its cost renders justice unattainable. Using cost as a reason for changing a proved system is expedient as well as false. Cost comparisons of the judicial against the legislative, at either state or federal levels, will show the weakness of this criticism.

### 3. Juries and Delay

Existing delays in the jury calendars of some courts are not attributable to any innate defect in the jury system, but rather to the volume of litigation, inadequate facilities and insufficient personnel. The addition of more judges in crowded areas, and procedural reforms in jury calendar practice will improve the situation. Efficiency of court administration is a goal to be achieved. Improvement of the present system is more economical than developing a new one.

### 4. Jury Verdicts

Critics contend that juries are ill suited to make accurate findings of fact or to comprehend and apply a judge's instructions. Empirical studies, however, show that juries usually reach fair and just conclusions, and that juries ordinarily will not disregard established law in favor of their own concepts of justice. Most experienced trial lawyers are convinced that nothing yet conceived is more likely to produce just results than the jury trial. In addition, the jury serves an important function in assuring judicial impartiality and affords an unequalled opportunity for citizens to participate in an important governmental activity.

### 5. Jury Composition

Juries are not selected because of political "ties" and thus are able to counter "political connections" of litigants or counsel. Jurors, when chosen from all walks of life, constitute a cross-section of the populace and function as the conscience of the community. They bring a fresh outlook

into the case and exhibit interest and responsibility. At the minimum, the juror is entitled to the following consideration:

- (a) Adequate compensation for his service supplemented by the support of his employer in paying the difference between jury fees and his regular compensation.
- (b) Proper facilities to supply reasonable comfort.
- (c) Efficient court administration to avoid wasting his time when called for jury service.

Properly selected and dealt with, jurors will promote the adversary-jury system enthusiastically.

#### 6. Judicial Quality

A prime concern of lawyers and the people should be that the referee of the courtroom, the judge, be provided with all possible service and skills to help him to maintain and improve his abilities for the good of all. Judges are concerned with performance and, by the nature of their occupation, should be interested in evaluation of their work. Means should be devised whereby the over-all work of judges can be evaluated by qualified persons.

Awards, publicity or other practices honoring judges should be carefully restricted by donors and recipients to avoid any implication of favor or bias.

#### 7. Legislative Pressure

No pressure group should seek legislation which is inimical to the public interest. Lawyers should avoid sponsoring bills that have no merit except to increase lawyers' incomes. Claimants should avoid legislative campaigns to eliminate legitimate defenses in tort actions. Defendants should not press for laws that would unfairly impede recoveries by persons who have meritorious claims. Trial lawyers representing

both plaintiffs and defendants who combine their efforts in the public interest can provide worthwhile leadership in corrective legislative programs.

## VI. THE PUBLIC IMAGE OF CASUALTY INSURANCE

### 1. Need for Public Information

It is essential for the public to understand that personal injury judgments against insured defendants are paid by hometown dollars in the form of premiums. As judgments increase, premiums must also increase.

Judgments will be increased if legal limitations on tort recoveries such as contributory negligence, assumption of the risk and immunities, are removed arbitrarily and without adequate consideration being given to the public policy inherent in such limitations. Information on the actuarial concepts involved in fixing rates and the impact of large settlements and judgments on the premium to be paid must be put forth with clarity and frequency. The casualty insurance industry has an important story to tell. This story includes the low level of cancellations; the relation of insurance rates to the rising costs of auto repairs, hospital and medical bills; auto thefts; and the beneficial growth of uninsured motorist coverage. Too many persons lack understanding of casualty insurance and its role in American life. Proper understanding will lead to full support of this industry and its objectives.

### 2. Criticisms of Present System

Criticism has been directed to the present tort reparations system because of the method and manner of payment, alleged delay in payment and because of practices relative to risk selection and rejection. An analysis of these criticisms would indicate that many are unfounded and that insurers are moving toward correction of any existing deficiencies:

(a) Critics say that a claimant should not be allowed to recover two or three times for the same injury from collateral sources. This practice creates "windfall" situations which encourage claims, leading to over-compensation. Various groups are attempting to focus attention on this problem so that unwarranted double payments for tort damages may be eliminated.

(b) Critics say that lump sum payments to claimants do not consider future problems and hardships of the injured. The new insurance technique of employing open-end releases allows consideration of future financial need. (See page 23, section 3.) While a few injured persons are incapable of handling large sums of money which are given to them suddenly, in most instances the insurer, the Bench and the Bar can protect and assist the injured recipient.

(c) Criticisms relative to risk selection, rejection of applicants, and cancellations usually ignore past records of some insureds that establish them as bad risks or persons to be rejected, particularly in the automobile insurance field. Some drivers have habitually bad records, thus imposing upon the society which allows them to operate on public roads. Related to these charges are complaints regarding insurance company insolvencies. The industry is justly jealous of its reputation which must not be tarnished by the disreputable few and is vigorously seeking cooperative legislative and industry solutions.

(d) Another criticism is that, because of intentional delay by the defense, some claimants are forced to settle for too little money. Insurance companies sustain severe losses when litigation is delayed. They and their defense counsel decry unreasonable

delays which merely add to trial costs and complexities. Delay is the exception, not the rule. Statistics show that all but two or three per cent of personal injury claims are settled without trial to verdict, presumably to the satisfaction of all concerned.

### 3. Modern Insurance Developments

Critics who say that insurance coverages do not meet modern times and needs are unaware of recent developments. Expanded medical pay coverage and uninsured motorist protection are but two examples of the insurance industry's efforts to meet the increased needs of the insuring public.

A "heart" has been put into the insurance industry through new concepts of settlement techniques. In addition to advance payments to the injured so that they may meet current expenses before final settlement of a claim, open-end releases are used which take the future into consideration, and rehabilitation programs attempt to restore the "whole man" to society. Insurance companies also offer accidental death or dismemberment coverage to the driver and members of his family, good driver plans, non-cancellation and renewal guarantees so that virtually permanent automobile coverage is offered at rates tailored to the type of driving and to the accident record of the individual insured.

Consideration should be given to seeking broadened coverage of the medical pay endorsement, with subrogation or set-off provisions, to include third parties not riding in the vehicle and to cover loss of income. Immediate settlements under medical pay and income protection coverages, apart from any connection with a possible liability suit, should become standard industry practice. Equally beneficial would be broadened uninsured motorist coverage to include pedestrians and other third parties.

## VII. RESEARCH AND STATISTICS

While many of the programs discussed in previous pages can be started or completed on the basis of common sense, information already available and principles and ethics which are firmly established, others cannot progress solidly until adequate statistics are available. With the development of statistical research in the accident claims area, a further evolution of needs for improvement of the tort-fault system, as funded by private insurance can be made. Reforms and improvements can then be based upon facts to protect the public interest. Research should center on the following:

### 1. Claim Amounts

Statistics are needed on amounts paid in claims (a) before and after lawsuits are filed, (b) where claimants are or are not represented by counsel, and (c) where proof of injury or liability is lacking or dubious.

### 2. Counsel Fees

Studies should disclose fees paid to defense counsel (a) for opinions where no lawsuits are filed, (b) where cases which have received minimal handling by counsel have been settled, (c) for the various preparation phases of litigation where the cases are settled without trial, and (d) when actual trial takes place.

These statistics should be categorized, for urban versus rural areas, and for courts where the dockets are current as compared to those that are delayed. A comparison is needed between companies which follow "hard" versus "soft" settlement policies. Additionally, statistics on a national basis are desired concerning the amounts paid in contingent and brokering fees, as well as the net recoveries to claimants so that these can be related to the problem of claim costs.

### 3. Claim Costs

Statistics should be compiled which compare, industry-wide, the allocated and unallocated costs of (a) claim settlements; (b) trial; and (c) denial of claims liability. These should separately state costs when insurance house counsel are used, compared to fees paid private lawyers. Loss ratios for each method should be made available.

### 4. Accident Costs Statistics

Further studies would have particular application to costs and to improvement of the adversary-jury system:

- (a) Desired is a compilation of the dollar range of claims for serious injuries or deaths in which the claimant is paid nothing, classified by age and sex.
- (b) A study is required of the national loss, both social and economic, of injuries and deaths from automobile accidents. This study should extend beyond the immediate families to all those affected, whether compensated or not.
- (c) A time-cost study of the workmen's compensation system as compared to the tort law method would provide the basis for future action within and outside of the insurance field.
- (d) The national results of claims, resulting settlements, and lawsuits in the personal injury field are not known. Valuable information would include:
  - (1) The number of lawsuits tried, the amounts of the demands, and the range of the verdicts;
  - (2) The number of claims settled without lawsuits, the dollar ranges, and stages at which agreements were reached;
  - (3) The number of injury or death claims resulting from automobile

accidents, which are presented annually, where fault is clear, doubtful, or nonexistent;

- (4) Analysis of the time lapse before settlements were achieved, with comparisons shown before and after lawsuits are filed.

### 5. Fault Impact

With the aid of psychiatrists, psychologists and others closely engaged in highway safety efforts, an attempt should be made to provide detailed analyses to show whether the concept of liability based on fault is a significant factor in highway safety. If so, is there any relationship to the limits of policy coverages, to premium rates or loss of insurance coverage?

## VIII. CONCLUSION

Much has been accomplished in relieving court congestion, improving efficiency in court administration, expanding insurance coverage, reducing costs of claim handling, expediting settlements and increasing the net amount received by injured claimants. More remains to be done by the cooperative efforts of the Bench, the Bar, the legislative and executive branches of government, the insurance industry and the public. These efforts will redound to the benefit of the American people by the preservation of the public's right to a jury trial in civil litigation and liability based on fault.

The adversary-jury system should be retained. Reasoned advances will be accomplished if the foregoing suggestions are acted upon. If those so deeply concerned will offer their time and resources, the achievement will be entirely worth the effort. The sponsors of this paper pledge to do all that they can to implement these suggestions, within the limitations of their resources.

EXHIBIT H

# Responsible Reform

A Program To Improve The  
Liability Reparation System



*To Increase the Professional Skill and  
Enlarge the Knowledge of Defense Lawyers*

VOLUME 1969

NUMBER 8

A Special Report By

THE DEFENSE RESEARCH INSTITUTE, INC.

*(A Non-Profit, Non-Stock Corporation)*

1212 W. Wisconsin Avenue

•

Milwaukee, Wisconsin 53233

# Responsible Reform

A Program To Improve The Liability Reparation System

## CONTENTS

	<i>Page</i>
INTRODUCTION .....	3
SUMMARY OF PROPOSALS .....	5
HIGHWAY SAFETY .....	7
Proposals .....	7
Discussion .....	7
Legislation .....	8
FIRST PARTY COVERAGE .....	11
Proposal .....	11
Discussion .....	11
Legislation .....	12
COURT CONGESTION AND DELAY .....	14
Proposals .....	14
Discussion .....	14
Legislation .....	15
CONTINGENT FEE REGULATION .....	18
Proposal .....	18
Discussion .....	18
Legislation .....	18
COLLATERAL SOURCES OF RECOVERY .....	21
Proposal .....	21
Discussion .....	21
Legislation .....	22
COMPARATIVE NEGLIGENCE .....	23
Proposal .....	23
Discussion .....	23
Legislation .....	23
ADVANCE PAYMENTS .....	24
Proposal .....	24
Discussion .....	24
Legislation .....	24
ELIMINATION OF AD DAMNUM .....	25
Proposal .....	25
Discussion .....	25
Legislation .....	25
FRAUDULENT CLAIMS .....	26
Proposal .....	26
Discussion .....	26
Legislation .....	26
EFFICIENT USE OF LEGAL EFFORT .....	27
Proposal .....	27
Discussion .....	27
Legislation .....	27
REGULATION OF AWARDS FOR PAIN AND SUFFERING .....	32
Proposal .....	32
Discussion .....	32

Requests for additional copies of this publication should be directed to:  
 Defense Research Institute  
 1212 West Wisconsin Avenue, Milwaukee, Wisconsin 53233.

© THE DEFENSE RESEARCH INSTITUTE, INC. 1969

## Introduction

**T**HIS IS an age of criticism, particularly of existing principles, values and institutions. All too often a system or institution is criticized for imperfection, not due to basic flaws in the principles upon which it is based, but caused by the fallibility of those who operate the system. Too often, critics seek a new and idealistically perfect system rather than responsible reform to correct imperfections which exist in an otherwise workable system.

Those who have proposed radical change have a relatively easy task, especially if what they have proposed is nothing more than a theory never tested in actual practice. The flaws of the existing system — whether imagined, exaggerated or real — are emphasized. Those who come forward to point out practical and philosophical problems in the application of revolutionary change are characterized as unobjective defenders of the status quo. Those who come forward with reforms to cure the actual ills of the existing system, rather than with something untried and untested, are often placed in the same light.

So it has been with the present liability reparations system, especially as it relates to the compensation of those injured in automobile accidents. The entire system is based upon a principle which has been basic to society since its inception — one who causes injury to another should fairly and adequately compensate him for that injury. Those who criticize the system and propose that it be discarded in favor of some untested alternative do not directly attack this principle. Rather, in proposing their alternatives, they attack the manner in which the system is operated. They claim it is too slow. Yet, they disregard obvious measures which could be taken to expedite the process. They claim it is too cumbersome. Yet, they overlook steps which could be taken to modernize and streamline its procedures. They argue that the system is too costly. Yet, they pay little

attention to obvious means of reducing cost. At every turn reform is lost in the rush toward revolution.

At an early date, defense lawyers began to study the problems which faced the liability reparation system and the proposals which were offered for change. Much time and effort were expended to demonstrate that many of the criticisms of the system were untrue or exaggerated. Also, the shortcomings of proposed plans were made known. Through this process of study and analysis it was found that some problems in the operation of the present system actually do exist. However, it was clearly demonstrated that these problems could be corrected within the framework of the present system and without the need to destroy the basic principle upon which it is built.

In January of 1968 the Defense Research Institute, International Association of Insurance Counsel, Federation of Insurance Counsel and Association of Insurance Attorneys issued a position paper, **JUSTICE IN COURT AFTER THE ACCIDENT**, which outlined areas in which improvement of the present system could be achieved. The proposals set forth herein are a continuation and amplification of the work which began with that special report and were prepared and are offered for consideration by the Defense Research Institute. They are endorsed in principle by the other three defense associations with the recognition that differences of opinion among the membership of the various groups may exist as to specifics contained within some of the proposals.

We are here concerned with implementing the recommendations contained in **JUSTICE IN COURT**. This is by no means a "plan" as that word has come to be used in reference to certain automobile accident reparation proposals. It

is rather a compilation of specific suggestions for improvement of the present system — improvement based upon the realization that the principle underlying the entire system is valid and should be maintained. These proposals can provide a vehicle for experimentation within particular states which, if successful, can then be utilized in other jurisdictions.

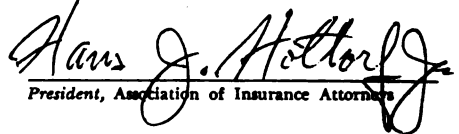
The eleven proposals which follow are directed at some of the most basic problems which are claimed to exist in the operation of the present system. In most instances, sample legislation is also set forth to assist those interested in implementing the proposals. What is sought is to make the present system less costly, more expeditious and more efficient. We do not suggest that the proposals are a panacea.

Other groups, including the American Bar Association, have studied the problems and have proposed programs of responsible reform within the framework of basic legal doctrine. These should be examined and implemented when they are found to have merit. We will lend our support to the implementation of these proposals and any others which are meritorious. We will also re-examine our recommendations in the light of future developments and will modify or change our proposals if events indicate that the public interest merits such action. But our work will not stop there. More can be done and needs to be done and therefore we will make additional positive suggestions and proposals from time to time. Reform is a journey which has no final destination.

  
President, Defense Research Institute

  
President, International Association of Insurance Counsel

  
President, Federation of Insurance Counsel

  
President, Association of Insurance Attorneys

October, 1969

## Summary Of Proposals

The following proposals are made for improvement of the personal injury reparation system:

	<i>Page</i>
<b>HIGHWAY SAFETY:</b> Through the development and implementation of specific research programs and legislation calling for: (1) mandatory license revocation and fines for those convicted of operating a vehicle while under the influence of alcohol or drugs; (2) permanent revocation of driving privileges for habitual moving traffic law violators; (3) severe penalties for pedestrians involved in motor vehicle accidents while under the influence of alcohol or drugs; (4) uniform licensing standards for drivers with periodic physical and mental examinations and testing; and (5) mandatory use of motor vehicle safety equipment including safety belts and motorcycle safety helmets; and the support of programs and proposals of others, efforts will be made to reduce the highway accident tolls by concentration upon motorists as a prime cause of automobile accidents .....	7
<b>FIRST PARTY COVERAGE:</b> That each automobile insurer offer its insureds the option to acquire minimum first party coverage for medical and hospital expenses, uninsured motorist protection, income disability and accidental death benefits for economic losses resulting from motor vehicle accidents. This insurance should cover the named insured, members of his family residing in his household, and guest passengers injured while occupying the insured vehicle .....	11
<b>COURT CONGESTION AND DELAY:</b> Through appropriate legislative action means should be established to: (1) provide a sufficient number of judges to keep abreast of the increasing judicial work load occasioned by population growth; and (2) mandatory arbitration of all suits which involve claims under \$3000 should be employed in jurisdictions troubled with court delay. Through additional research the root causes of court delay will be isolated in those jurisdictions in which it exists .....	14
<b>CONTINGENT FEE REGULATION:</b> Contingent fees and procedures for their use should be regulated in the following manner: (1) the amount of the fee should be strictly regulated by appropriate local court rule or legislation; (2) every retainer on a contingent basis should be in writing in a fixed format and signed by the client; (3) a retainer statement should be filed with the appropriate judicial authority by the attorney after its execution; (4) there should be strict control of the division of fees between attorneys based upon work performed; and (5) upon completion of the claim or suit an attorney should file an itemized closing statement with the proper judicial authority and deliver a copy to the client .....	18
<b>COLLATERAL SOURCES OF RECOVERY:</b> That the Collateral Source Rule be modified so that evidence of the nature and extent of all benefits and services received or to be received by the claimant as a result of the alleged injuries and damages be sustained be admissible. That evidence of the remarriage of a surviving spouse be likewise admissible in an action for wrongful death .....	21
<b>COMPARATIVE NEGLIGENCE:</b> That the determination of whether the rule of contributory negligence should be abandoned is a matter for local determination. However, when the rule is to be changed, the present Wisconsin Comparative Negligence Rule and Procedure is preferable and should be substituted .....	23

- ADVANCE PAYMENTS:** That liability insurers be given the right to make advance payments for economic loss to claimants without the possibility that the claimant will be allowed to introduce evidence of the advance payments on the issue of liability during subsequent litigation. That liability insurers making advance payments be allowed to take a credit therefore against any subsequent judgment recovered by the claimant or settlement made with him .....24
- ELIMINATION OF AD DAMNUM:** That any pleading demanding relief in the form of unliquidated damages may only make a prayer for general relief and state that the amount claimed is within the minimum and maximum jurisdictional limits of the court .....25
- FRAUDULENT CLAIMS:** That strict sanctions should be imposed upon those who intentionally make claims for personal injury or property damage known by them to be false or fraudulent and upon those who assist in the making of such claims with knowledge of their false or fraudulent character .....26
- EFFICIENT USE OF LEGAL EFFORT:** That those practices and procedures which provide for limitation on the right to voluntary dismissals or non-suits, the right to a split trial on issues of liability and damages, modification of appeal bond rules, summary judgment, mental and physical examinations of litigants, demands to admit the genuineness of documents or relevant facts, and offers of settlement, judgment and damages should be adopted in those jurisdictions which do not have such rules and also in those jurisdictions whose present rules are not as workable as those which are proposed .....27
- REGULATION OF AWARDS FOR PAIN AND SUFFERING:** That an attempt be made to formulate a plan which will serve as a guide to the appraisal of fair compensation for pain, suffering and inconvenience which results from the injury sustained through the fault of another .....32

# Highway Safety

## PROPOSALS

1. DRI and other concerned defense lawyer groups have sponsored scientific research to determine the effect which the adoption of a no-fault auto compensation plan would have upon highway safety. The preliminary research demonstrates that the abolition of fault in determining civil liability will result in an increase in the frequency of automobile accidents. DRI will make the results of this research available to those who are interested in this subject and other meaningful research of a similar nature will be supported.
2. The following traffic safety legislation will be supported:
  - a. Mandatory license revocation and severe fines for those convicted of operating a motor vehicle while under the influence of alcohol or drugs.
  - b. Permanent revocation of driving privileges for those motorists who are found guilty of habitual moving traffic law violations.
  - c. Severe penalties for pedestrians who are involved in motor vehicle accidents while under the influence of alcohol or drugs.
  - d. Uniform licensing standards for all drivers, coupled with a requirement for periodic physical and mental examinations and testing of drivers.
  - e. Mandatory use of motor vehicle safety equipment including safety belts and motorcycle safety helmets with penalties for nonuse and provisions calling for nonrecovery for injuries incurred which could have been prevented through use of such safety equipment.
3. In addition defense lawyers will lend their support and energy to assist in programs that call for:
  - a. Establishment of an improved system to identify those repeatedly involved in automobile accidents so that those found guilty of improper

driving practices may be effectively dealt with.

- b. Mandatory and meaningful driver education.
- c. Establishment and maintenance of adequate police forces to patrol highways and apprehend violators.
- d. Implied consent laws.
- e. Periodic vehicle inspection.

## DISCUSSION

In the discussions and writings of those who propose no-fault automobile accident reparation systems little if any mention is made of improved highway safety. Those who propose such plans seem to consider the highway accident as an inevitable occurrence.<sup>1</sup> There is no question that a reduction in the number of highway accidents would go a long way toward curing many of the problems, such as the cost of auto insurance and the impact of auto cases on court work loads, which are held out as reasons why the present system should be eliminated.<sup>2</sup> We are concerned with highway safety and are convinced that meaningful programs to prevent highway accidents would have worthwhile results.

There are those who claim that a shift to a no-fault auto accident reparations system would have no effect on highway safety.<sup>3</sup> We believe that this is a subject so important that decisions regarding it should not be made on speculation and conjecture. For this reason DRI and other concerned defense lawyer groups funded a research project to study this question. Lawrence Lawton, a professional engineer and traffic consultant directed the research. The research is nearing completion and a preliminary report, *Psychological Aspects Of The Fault System As Compared*

<sup>1</sup>See, e.g., Keeton & O'Connell, BASIC PROTECTION FOR THE TRAFFIC VICTIM 11-13 (1965)

<sup>2</sup>"Any responsible student of the problem must acknowledge that there will be no sizable reduction in automobile insurance costs until the traffic safety record improves and until the rate of national inflation decelerates." Address by James S. Kemper, Jr., American Mutual Insurance Alliance Annual Meeting, May 26, 1969

<sup>3</sup>Insurance Leaders Says Plan Eliminates Two Auto 'Hang-Ups,' Insurance Information Institute (News Release Dec. 11, 1968)

*With The Non-Fault System Of Automobile Insurance*, has been completed. Based upon the initial research, this preliminary report concludes that the adoption of a no-fault automobile accident reparation system and the abolition of fault in determining civil liability will result in an increase in the frequency of automobile accidents. The operation of the present fault system was found to provide a meaningful deterrent to improper motor vehicle operating practices. DRI will make the results of this research available to those who are interested in this subject. In addition, meaningful research which seeks to further examine this problem will be supported.

Much could be done to improve highway safety if greater concentration were placed on the motorist as the cause of accidents. Studies have shown the high involvement of alcohol and drug use as a cause of traffic accidents.<sup>4</sup> It has also been shown that traffic deaths and injuries could be reduced by a substantial percentage if only the small number of habitual traffic law violators were taken off of the road.<sup>5</sup> We believe that driving is a privilege and not a right. We have set forth certain proposals to deal with the accident producers and will support all meaningful legislation to protect the careful motorist from those who abuse their driving privilege.

Studies have shown that many drivers do not have the mental or physical capacity to operate high-powered vehicles on modern, congested highways.<sup>6</sup> In addition, many of the vehicles which are operated on our highways are allowed to fall into

a state of disrepair which makes them a menace to others.<sup>7</sup> Just as pilots and aircraft are given periodic inspection to insure air safety, motorists and vehicles should be inspected to improve highway safety.

Automobile safety devices such as safety belts and motorcycle safety helmets have been shown to be extremely effective in the prevention of injury and death on our roads.<sup>8</sup> We have proposed and will support measures to require the installation and use of such devices.

Finally, we will support measures which make the work of those persons charged with the enforcement of our traffic laws more effective.

The proposals that have been made and will be supported are not claimed to be the ultimate solution which will prevent all highway accidents. Much more can be done and is being done. There is also the need to improve the highways and vehicles which we use. Others are working in those areas and they also need support. We will, for the present, concentrate our traffic safety efforts on the driver. We believe that this is an area in which we can be most effective and is an area which has been given too little attention.

## LEGISLATION

### MANDATORY LICENSE REVOCATION FOR OPERATION WHILE UNDER INFLUENCE OF DRUGS

**Operating Under Influence Of Drugs.** (1) It shall be unlawful for any person to operate a motor vehicle upon the public highways of this state while under the influence of drugs.

(2) For the purposes of this statute, drugs shall include alcohol, barbituates, stimulants or any other chemical, organic or inorganic, as classified by the National Pharmaceutical Manual as being capable of producing intoxication.

(3) Upon conviction, the defendant may be sentenced to a term in the county jail not to exceed one year, or fined in an amount not to exceed \$1000, or both. In every such case, the Court shall order the driver's license revoked for the period of one (1) year and shall forthwith demand the driver's license, which shall be delivered to the Court before the defendant is released from custody. The license, together with a record of the conviction, shall be transmitted to the Department of Motor Vehicles, and the defendant may, upon expiration of one year, make application for re-

<sup>4</sup>"The use of alcohol by drivers and pedestrians leads to some 25,000 deaths and a total of at least 800,000 crashes in the United States each year." *Alcohol and Highway Safety - A Report to Congress from the Secretary of Transportation*, Dep't of Transp. (August 1968). It should be noted that tougher control of drinking drivers in the United Kingdom significantly reduced the accident rate in that country when new laws were properly enforced. *The Road Safety Act 1967 and Its Effect on Road Accidents in the United Kingdom*, 17 *Traffic Digest & Rev* 3 (No 8, Aug 1969).

<sup>5</sup>Barnes, *Portrait of a Bad Driver*, *Best's Ins News* at 16 (Aug 1965); Campbell, *The Effect of Driver Improvement Actions on Driving Behavior*, 3 *Traffic Safety Research Rev* 3 (1959).

<sup>6</sup>Proceedings, National Conference on Medical Aspects of Driver Safety and Driver Licensing (Nov 1964); West, Nielsen, Gilmore & Ryan, *Natural Death at the Wheel*, 205 *JAMA* 266 (July 1968); Smith, *When Your Patient Shouldn't Drive*, *Medical Economics* at 110 (Oct 28, 1968).

<sup>7</sup>*Safety for Motor Vehicles in Use - A Report to the Congress from the Secretary of Transportation*, Dep't of Transp. (June 1968).

<sup>8</sup>Kircher, *The Seat Belt Defense* 7 (DRI monograph Sept 1967); *Motorcycles in the U. S.*, Dep't of Health, Education & Welfare (1967).

instatement of his driver's license pursuant to such rules and regulations as shall be promulgated by the Department.

(4) If the defendant has been previously convicted for the above offense within a period of sixty (60) calendar months, the Court shall sentence him to a term in the county jail, of not less than six months or more than one year.

#### PERMANENT REVOCATION OF DRIVING PRIVILEGE FOR REPEATED OFFENSES

**Permanent Revocation Of Driving Privilege.** (1) It shall be the duty of every traffic court in this state, whether civil or criminal, to keep a record of the convictions of each person who appears before them, stating the date, the charge and the result of the trial. Said information shall be transmitted to the Department of Motor Vehicles once each month, and said court records shall be retained by said court for a period of five years, and shall then be destroyed one year at a time, so that said records reflect the period five years prior to the date such records are destroyed.

(2) If the defendant shall have been previously convicted for traffic offenses under Sections \_\_\_\_\_ of the statutes or motor vehicle regulations of this state, [where such offenses involve injury to persons or property, or the threat of such injuries, or the repeated operation of a motor vehicle while under the influence of drugs,]<sup>9</sup> upon conviction for the fifth such offense, within a period of five years or sixty calendar months, the defendant shall be ordered permanently deprived of his driver's license and his standing to obtain vehicular license plates.

(3) Nothing in the foregoing statute shall apply so as to prohibit a person who owns, rents or operates more than one motor vehicle from obtaining license plates for all such vehicles, if used in the production of income and not solely for personal convenience, and if such vehicles are to be operated at all times by others.

#### PENALTIES FOR PEDESTRIANS WHO CAUSE MOTOR VEHICLE ACCIDENTS

**Pedestrians Causing Accidents.** (1) Any pedestrian who shall be found legally at fault, in whole or in part, for the death, personal injury or property damage of another arising out of a motor vehicle accident on the public highways of this state, if such liability is founded upon said person's use of drugs and the conduct shall have been the product of intoxication by reason of the use of said drugs, shall be guilty of a misdemeanor and may be sentenced to a term in the county jail not to exceed one year, or a fine not to exceed \$1000, or both.

(2) For the purposes of the above statute, the term drugs shall include any substance taken orally, intravenously, or by any other means, which significantly impairs the physical or mental capacities of said pedestrian, whether or not such drugs are taken under medical orders. Drugs shall include alcohol, barbituates, stimulants or any other chemical, organic or inorganic, as classified by the National Pharmaceutical Manual as being capable of producing intoxication.

<sup>9</sup>The material in brackets may be eliminated if statutes in a particular state are specific enough to cover the listed areas.

#### UNIFORM LICENSING STANDARDS FOR ALL MOTOR VEHICLE OPERATORS

**Operators License Standards.** (1) No person shall operate a motor vehicle upon the public highways of this state unless he shall have in his possession a valid operator's license, issued by the Department of Motor Vehicles of the State of \_\_\_\_\_, as provided herein.

- (a) No person under the age of 16 years shall be eligible for a permanent driver's license.
- (b) No person who has been adjudged incompetent, by a judicial finding, shall be eligible for a driver's license.
- (c) No person who is addicted to the use of drugs, or who has been found guilty of a traffic offense under Section \_\_\_\_\_, five or more times within a period of 5 years or 60 calendar months, shall be eligible for a driver's license.
- (d) No person who cannot read and write the English language may operate a motor vehicle within this state, whether in possession of a valid foreign driver's license or not.
- (e) Every other person who shall apply for a driver's license within this state, shall first be required to pass a written examination demonstrating a sufficient understanding of the laws and motor vehicle regulations necessary to properly operate a motor vehicle, as the Department of Motor Vehicles shall require, of the class and kind for which the application is made.
- (f) Every applicant for a driver's license shall be required to pass a visual examination as established by the Department, which shall insure a visual capacity, with or without glasses, of 20/40 in each eye, and adequate depth and peripheral vision to operate a motor vehicle of the class and kind for which the application is made.
- (g) If the applicant for a driver's license shall indicate in his application, any disease, whether physical or mental, or any impairment of organs, body or limbs which would significantly affect his capacity to drive a motor vehicle of the class and kind for which the application is made, the Department may require him to submit to a physical or mental examination or both, as shall be established by the Medical Advisory Board of the Department of Motor Vehicles. No license or temporary permit shall be issued until such examination has been filed with the Department.
- (h) Every person who is, or shall become licensed to operate a motor vehicle under the laws of this state, shall be examined pursuant to the above provisions, including a suitable demonstration test of his driving ability, once every four (4) years. If the applicant for renewal of his license has been involved in a motor vehicle accident under Section \_\_\_\_\_, or shall indicate in his application for renewal of his license any serious illness or physical or mental impairment prior to said renewal, he shall be re-examined even though four years shall not have expired since his last examination.
- (i) Any person who is the holder of a valid driver's license, and who has become incapable of operating a motor vehicle of the

class and kind for which said license is issued, may be required by the Department to submit to re-examination upon the request of any citizen and at least one member of his immediate family, or if without relatives, some member of the sheriff's office, city police or judiciary. Such request shall be made to the Director of the Department of Motor Vehicles, by affidavit, duly verified and made upon the personal knowledge of the affiant, setting forth the facts upon which such request is made and filed with the Department. Such a request shall not subject the affiants to civil or criminal liability by the holder of said license or anyone acting by or through him.

- (j) Any person who is the holder of a valid driver's license who is between the ages of 16 years and 25 years, and who is involved in a significant number of moving traffic violations (not less than six) during any 12 month period, may be re-examined at the direction of Department, and shall be placed on probationary status for a period of 12 months pursuant to such rules and regulations as shall be promulgated by the Department.
- (k) Any person licensed under the law of any other state or foreign country shall be eligible to operate a motor vehicle in this state, if he has a valid operator or driver's license from such other jurisdiction, for a term not to exceed thirty (30) days.

#### MANDATORY INSTALLATION, MAINTENANCE AND USE OF SAFETY EQUIPMENT

**Safety Equipment.** (1) It shall be unlawful for any person to own or operate or to allow another to operate his motor vehicle, upon the public highways of this state, unless all safety equipment or devices attached thereto, or constituting a part of

the mechanical operational system of said motor vehicle, or to be worn or used on the person of said owner, operator or passengers, as required by state law, are properly installed, maintained and in good working condition, at any time said motor vehicle is in motion, or is in use upon said public highways.

(2) Safety belts shall be provided in the seats of all motor vehicles having four wheels or more, for the maximum number of passengers who can occupy said seats. Evidence of the non-use of safety belts or safety helmets while riding on a motorcycle, by either the operator, owner or passengers in said motor vehicle shall be admissible in the trial of any action for death, personal injury or property damage arising out of the use of said motor vehicle, if such non-use is relevant to the cause of the accident or the death, personal injuries or property damage incurred by the parties to the litigation.

(3) Public passenger carriers, including but not exclusive of taxicabs, buses, school buses and railroad passenger cars, which are used for the transportation of passengers and which obtain a maximum speed of forty (40) miles or more, and which are primarily used to transport persons a distance of more than one (1) mile between stops, shall have similar safety belts attached to each seat.

(4) Failure on the part of the owner or operator to install or maintain in said motor vehicles, such safety equipment, shall be punishable, upon conviction, as a misdemeanor, and the court may sentence said person(s) to a term in the county jail not to exceed one (1) year, or a fine not to exceed \$1000, or both.

(5) Evidence of nonuse of safety equipment by the owner, operator or passengers in all motor vehicles shall be prima facie proof of negligence of said owner, operator or passengers in any action for damages based on the death, personal injuries or property damage sustained by said owner, operator or passenger.

## First Party Coverage

### PROPOSAL

That every automobile liability policy covering any private passenger vehicle, on a non-fleet basis, provide minimum stated coverages for medical and hospital expenses, uninsured motorist protection, income disability and accidental death benefits for the named insured and members of the family of the named insured residing in his household. That the policy provide the same coverages to guest passengers injured while occupying the insured motor vehicle who are not afforded such protection by sources collateral to the insured's policy. The named insured will have the right to reject this coverage as it applies to himself and members of his family residing in his household. Questions as to whether subrogation, setoff against liability coverage, excess or "other insurance" provisions will be part of the coverage should be left to the discretion of insurers.

### DISCUSSION

It is claimed that a problem exists with relation to the number of persons who are injured in motor vehicle accidents and receive no compensation for the economic loss that they suffer.<sup>10</sup> When an analysis is made of the great percentage of the population that is protected against such loss by forms of non-auto, first party insurance,<sup>11</sup> and the number of persons covered by automobile medical payments<sup>12</sup> and uninsured motorist coverage<sup>13</sup> is also taken

into consideration, there is serious doubt as to whether the problem is as great as is claimed.

Many of the recent automobile accident reparations plans that have been proposed, notably the Keeton-O'Connell,<sup>14</sup> American Insurance Association (AIA)<sup>15</sup> and Cotter proposals,<sup>16</sup> seek to solve this problem, to whatever extent it actually exists, by forcing all motorists to purchase minimum first party coverage. Under such plans the purchase of this coverage is a condition precedent to being allowed to drive in a state enacting the plan. However, no provision is made under such plans for the motorist who has adequately protected himself and his family against such losses through other sources of indemnity. There is no way for him to avoid purchasing unneeded coverage. He is forced to pay another premium for it. The plight of this "overinsured motorist" is further complicated under some plans (Keeton-O'Connell<sup>17</sup> and versions of the AIA plan proposed in Minnesota<sup>18</sup> and Connecticut<sup>19</sup>) which provide for a collateral source set-off. With a setoff the motorist who sustained medical and hospital expenses as the result of an auto accident would not be able to recover those expenses under his "no-fault" auto insurance if, for example, they had been paid by his medical and hospital insurance policy. While the propriety of the Collateral Source Rule is debated in a third party liability situation,<sup>20</sup> it is grossly unfair to force a person to pay for first party insurance under which he will not be able to recover benefits. Such persons will, in effect, subsidize the system for those who do not carry multiple coverages. Even without a collateral source setoff, it is inconsistent for

<sup>10</sup>Keeton & O'Connell, note 1 *supra* at 1

<sup>11</sup>Statistics for the year 1966 show that over 81% of the population was covered by private health insurance as compared to 50% in 1950. STATISTICAL ABSTRACT OF THE UNITED STATES at 466 (1968 ed)

<sup>12</sup>It has been estimated that over 80% of those insureds who purchase automobile liability insurance have voluntarily purchased medical payments coverage. Address by Andre Maisonnier, Independent Mutual Insurance Agents of New York meeting Sept, 1968

<sup>13</sup>Forty-six states have enacted statutes requiring insurers to offer uninsured motorist coverage. In eleven states, the coverage is mandatory, and in the remainder the insureds have the right to reject the coverage. Graham, *Recent Interpretations of the Uninsured Motorist Endorsement*, 4 The Forum 160 (Apr 1969)

<sup>14</sup>Keeton & O'Connell, note 1 *supra* at 343

<sup>15</sup>Report of Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations at 6 (American Insurance Association, Oct 21, 1968) [hereafter cited as AIA Report]

<sup>16</sup>House Bill 7109, Conn Gen Assembly (Jan Sess 1969)

<sup>17</sup>Keeton & O'Connell, note 1 *supra* at 401

<sup>18</sup>Senate Bill 753, Minn (1969)

<sup>19</sup>Senate Bill 731, Conn Gen Assembly (Jan Sess 1969)

<sup>20</sup>See page 21 *infra*

plans which are offered for the stated purpose of reducing the cost of insurance to force persons to buy protection they do not need.

We propose to give each insured the option to determine for himself whether the coverage offered is needed for his own protection and that of his family. He would not be forced to pay an additional premium for unneeded coverage. It should be noted that the proposal does not give the insured the right to reject the coverage available for the protection of guest passengers who are not otherwise covered. The purpose is to provide only necessary coverage and not overprotection.

No attempt has been made to spell out every detail of the proposed coverage. Whether subrogation or setoffs against liability coverage will be provided, whether provision will be made to allow for excess coverage or to provide "other insurance" exclusions, should be matters for insurers to determine at the local level. It would be folly to attempt to spell out these details or the dollar limits which should be offered on each type of coverage. What might be adequate or acceptable coverage in one area of the country may be inadequate or unacceptable in another due to variances in applicable rules of law, physicians' charges, hospital room rates, average wages and the like. We propose that certain coverages be offered for definite, stated minimum amounts and that the insured have the right to increase the coverages in given multiples at additional premiums. What we seek is to provide coverage at as low a cost as possible for those who really need it.

## LEGISLATION

### MINIMUM FIRST PARTY COVERAGES IN AUTOMOBILE POLICIES

**Required First Party Coverages.** (1) Every automobile liability policy covering any private passenger motor vehicle issued or delivered in this state on a non-fleet basis shall provide minimum medical and hospital benefits, uninsured motorist coverage, income disability and accidental death benefits under policy provisions approved by the Commissioner of Insurance to the named insured and members of his family residing in the same household injured in a motor vehicle accident and to guest passengers injured while occupying the insured motor vehicle as follows:

- (a) *Medical And Hospital Benefits.* All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance and

prosthetic services incurred within \_\_\_\_\_ (months) (year) (years) after the automobile accident up to an aggregate of \$ \_\_\_\_\_. Expenses for hospital room charges may be limited to semi-private accommodations.

- (b) *Uninsured Motorist Coverage.* Coverage in the amount of at least \$ \_\_\_\_\_ per person and \$ \_\_\_\_\_ per accident for the protection of the insureds who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom, occurring as the result of a motor vehicle accident. For the purposes of this coverage the term "uninsured motor vehicles" shall include, but not be limited to, any motor vehicle with respect to which there is a bodily injury liability insurance policy applicable at the time of the accident but the company writing the same denies coverage thereunder or is or becomes insolvent.
- (c) *Income Disability Benefits.* \_\_\_\_\_% of the loss of income from work during a period commencing \_\_\_\_\_ days after the date of the accident and not to exceed \_\_\_\_\_ weeks, but subject to a maximum of \$ \_\_\_\_\_ per month. In the case of a non-wage earner, such benefits shall consist of expenses not to exceed \$ \_\_\_\_\_ per day which are reasonably incurred for essential services in lieu of those the injured person would have performed without income during a period commencing \_\_\_\_\_ days after the date of the accident and not to exceed \_\_\_\_\_ weeks.
- (d) *Accidental Death Benefits.* The sum of \$ \_\_\_\_\_ to be paid to the personal representative of the insured should injury, sickness or disease resulting from an automobile accident result in death within \_\_\_\_\_ (days) (weeks) of the accident causing the same.

(2) The named insured shall have the right to reject the coverages enumerated in section (1) as they apply to himself and members of his family residing in his household. Unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy when the named insured has rejected the coverage in connection with a policy previously issued by the same insurer.

(3) The policy shall provide that the coverages enumerated under section (1) are not applicable to a guest passenger, other than a member of the family of the named insured residing in his household, injured while occupying the insured vehicle if similar coverages are afforded to said guest passenger either as a named insured or additional insured under the provisions of another valid automobile insurance policy.

(4) The amount an insurer is obligated to pay any insured under the provisions of subsection (1) (b) of this statute shall be reduced by the amount of benefits paid to said insured or his personal representative under the provisions of subsections (1) (a), (c) and (d).

(5) An insurer may exclude benefits to any insured or his personal representative when the insured's conduct contributed to the injury he sustained in any of the following ways:

- (a) causing injury to himself intentionally;
  - (b) operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;
  - (c) using a motor vehicle without the authority of its owner, knowing that such use is unauthorized;
  - (d) operating a motor vehicle without a license or after suspension or revocation of his license;
  - (e) operating a motor vehicle in any race or speed contest;
  - (f) seeking to elude lawful apprehension or arrest by a law enforcement official.
- (6) Insurers affording the coverages enumerated in section (1) may provide for subrogation and also for setoffs of amounts paid under that section against claims brought under the liability section of the policy through appropriate policy language approved by the Commissioner of Insurance.
- (7) Nothing contained in this statute shall be construed as preventing an insurer from providing broader benefits than the minimum benefits enumerated in section (1).

## Court Congestion And Delay

### PROPOSALS

1. That through appropriate legislative action a means be established to provide a sufficient number of judges to keep abreast of the increase in judicial work occasioned by population growth.
2. That the mandatory arbitration of all lawsuits which involve claims under \$3000 be employed in jurisdictions troubled with court delay.

### DISCUSSION

There are those who portray delay in the courts in such a light as to make it appear that every litigant in every jurisdiction must wait many years to have his case brought to trial.<sup>21</sup> There are also those who trace the problem of court delay to the automobile accident case and seem to assert that delay would disappear if this type of litigation were removed from courts.<sup>22</sup>

The problem of court delay, its apparent causes and probable cures were set forth in a special report, JUSTICE IN COURT AFTER THE ACCIDENT, issued by DRI, the International Association of Insurance Counsel, the Federation of Insurance Counsel and the Association of Insurance Attorneys in January, 1968.

Initially, DRI conducted two surveys to determine whether court delay was as widespread as was claimed.<sup>23</sup> These surveys demonstrated that court congestion and delay is a problem limited to a small number of metropolitan jurisdictions. State courts in only six cities in four states have delay of over three years between certification of readiness for trial by opposing attorneys and the commencement of the trial. Federal courts were found to be in even better condition. Other studies have shown that the automobile accident case takes up only a small percentage of judicial time and that the major culprit in jurisdictions having delay is the growth

of crime and resultant criminal actions in the courts.<sup>24</sup>

Another DRI survey is in progress to determine causes of congestion in pertinent cities. State and federal courts in cities which are known to have delay in excess of twelve months between the time attorneys certify readiness and actual commencement of trial are being measured. This study will recheck the accuracy of delay figures, the percentage of personal injury lawsuits arising from automobile accidents which are found in court backlog and the size of these lawsuits. Also sought will be the number of judges devoting their time to this type of trial (compared to other trials), how the time of judges who perform multiple duties is allocated, and when the number of judges was last increased for the court system. A second portion of the survey will follow and will examine closely court and trial procedures in congested cities. Other problems which will be studied include an examination of the states' facilities and court personnel, the availability of trial attorneys, and practices relating to *ad damnum*, contingent fee abuse and settlement procedures.

From the studies which have been conducted to date, certain conclusions can be drawn. While delay does not exist in every court and affect every litigant, it is a great problem in many metropolitan jurisdictions which handle litigation involving a considerable percentage of the nation's population and, to that extent, can be considered a serious problem. Removing automobile accident cases from the courts will not solve the problem of delay where it does exist. If these cases were removed and nothing more were done, any relief in the judicial workload would be temporary since the continued growth in population would produce more cases of other varieties to burden existing judicial manpower. If corrective measures are not taken, court delay will increase in urban areas so that an even larger segment of our population will be adversely affected. Courts and judicial personnel must

<sup>21</sup>See, e.g., O'Connell, *The Road Ahead: For Automobile Insurance*, 1 Conn L Rev 22, 23 (1968)

<sup>22</sup>*Ibid*

<sup>23</sup>Ross, *DRI Studies Refute Court Delay Claims of Critics*, 36 Ins Counsel J 46 (Jan 1969)

<sup>24</sup>*Id* at 48-9

be increased to meet population growth just as utilities and others offering services to the public expand their facilities to meet new demands. What is proposed is that legislative procedures be employed to provide a means through which the judiciary will be increased in size to keep pace of population growth. This approach has proved successful where it has been employed.

In addition to increasing judicial manpower, another means can be employed to provide for the equitable disposition of lawsuits and the relief of overburdened courts. In Philadelphia a system of mandatory arbitration of all lawsuits involving claims under \$3,000 has been successfully employed.<sup>25</sup> This procedure employs a panel of attorneys, skilled in the law, to hear such actions. The litigants' right to a trial by jury is preserved since a trial *de novo* is provided should any of the parties disagree with the judgment of the arbiters. Those who have had experience with the Philadelphia arbitration plan have found that it has successfully reduced the delay in the courts, has proved to be a less expensive procedure to the litigants, and has resulted in the equitable disposition of smaller cases. Arbitration patterned after the Philadelphia plan is recommended for all jurisdictions that are troubled with court delay.

## LEGISLATION

### CREATION OF NEW JUDGESHIPS BASED UPON POPULATION

**New Judges.** The legislature shall provide for one ..... judge in each ..... for each fifty thousand inhabitants or major fraction thereof according to the last census authorized by law.<sup>26</sup>

### MANDATORY ARBITRATION OF CERTAIN LAWSUITS<sup>27</sup>

**Submission To Board Of Members Of Bar.** (1) The several courts may, by rules of court, provide that all cases which are at issue where the amount in controversy shall be three thousand dollars (\$3000) or less, except those involving title to real estate, shall first be submitted to and heard by a board of three (3) members of the bar within the judi-

cial district. Cases which are not at issue and whether or not suit has been filed may be referred to the board of arbitration by agreement of reference signed by counsel for both sides in the case. Said agreement of reference shall define the issues involved for determination by the board and, when agreeable, shall also contain stipulations with respect to facts submitted or agreed or defenses waived. In such cases, the agreement of reference shall take the place of the pleadings in the case and be filed of record.

(2) **Manner Of Choosing Arbitrators.** (a) In all cases a board of arbitrators consisting of three members of the bar within the judicial district shall be appointed by the clerk of court from the list of attorneys qualified to act. The names of attorneys from said list shall be taken in the manner prescribed by the rules of the court in which the case is pending or in the absence of such rules in alphabetical order, except where attorneys are excused on account of incapacity or illness. Not more than one member of a firm or association of attorneys shall be appointed to the same board; provided, that the parties may agree to refer the cause to any one person whom they shall concur in choosing; the first person named to said Board of Arbitrators shall be Chairman of the Board.

(b) The Board of three (3) members of the bar shall be appointed ten (10) days after the case is at issue or after filing of the agreement of reference, upon written notice filed by counsel for either party with notice to the opposing counsel. Where no appearance has been entered the Board shall be appointed on written notice of plaintiff's counsel to hear the case and pass on the question of damages. The Board shall make its report and render its award within twenty (20) days after the hearing.

(c) A certified copy of the record containing the names of the arbitrators and the time and place of meeting shall be served upon the opposite party, his agent or attorney; but if said party has no agent or attorney, then it shall be lawful to serve said certified copy upon the opposite party in the same manner as a writ of summons in a personal action is now served: Provided, that a certified copy of the record, containing the names of the arbitrators and the time and place of meeting for selection of the Board shall be served at least ten (10) days before the time of meeting. No arbitrator shall be compelled to serve on more than ..... appointments in any one year.

(3) **Arbitrators To Be Sworn.** When the whole number of the arbitrators shall be assembled, they shall be sworn or affirmed, justly and equitably to try all matters in variance submitted to them, which oath or affirmation may be administered to them by the clerk of court or any person having authority to administer oaths, or in the absence of such person, by one of their number.

(4) **Postponement Of Meeting.** In every case in which application shall be made by either party to the arbitrators, for the postponement of a hearing, it shall be lawful for the said arbitrators, or a majority of them, if satisfied of its justice,

<sup>25</sup>Ryan, *Arbitration Cuts Philadelphia Backlog*, 10 For The Defense 42 (June 1969)

<sup>26</sup>This provision is modeled after Article 5, Section 6, of the Florida Constitution.

<sup>27</sup>Sample statutes and supporting research on mandatory arbitration are available from the DRI Milwaukee office.

according to the practice of the courts in like cases, to postpone such hearing.

(5) *Transmission Of Award.* As soon as the arbitrators shall have heard the evidence and allegations of the parties, they shall proceed to determine the matters in controversy, submitted to them, and they shall make out their award, which shall be signed by all, or a majority of them, and shall transmit the same to the clerk of court, within seven (7) days after they shall have agreed upon the same.

(6) *Award To Be Entered Of Record.* It shall be the duty of the clerk of court receiving such award forthwith to enter the same, of record, in the proper judgment docket.

(7) *Award To Have Effect Of Judgment.* Every award so entered shall have the same force and effect of a judgment entered by the court.

(8) *Award May Be Set Aside.* It shall be lawful for the several courts of \_\_\_\_\_ to set aside an award of arbitrators, on due proof:

- (a) That the arbitrators shall have been guilty of willful misconduct in the course of the hearings before them;
- (b) That the award was procured by corruption, or other undue means.

(9) *Proceedings On Award When Transferred.* After judgment the plaintiff may proceed upon said transferred record and judgment for the collection thereof, with costs, by execution, bill of discovery or attachment, in like manner as if the same were a judgment of the court to which it has been transferred.

(10) *Appeal.* Either party may appeal from an award of arbitrators, to the trial court in which the cause was pending at the time the rule or agreement of reference was entered, under the following rules, regulations and restrictions:

- (a) The party appellant, his agent, or attorney, shall make oath or affirmation, that "it is not for the purpose of delay such appeal is entered, but because he firmly believes injustice has been done;"
- (b) Such party, his agent or attorney, shall pay all the costs that may have accrued in such suit or action;
- (c) The party, his agent, or attorney, shall enter into the recognizance hereinafter mentioned;
- (d) Such appeal shall be entered, the cost paid, and the recognizance filed, within twenty (20) days after the day of the entry of the award of the arbitrators on the docket;
- (e) Any party appealing shall first repay to the county the fees of the members of the Board of arbitrators herein provided for, but not exceeding fifty percent of the amount in controversy. The balance of the arbitrator's fees shall be absorbed and paid by the county. Such fees shall not be taxed as costs or be recoverable in any proceeding. All appeals shall be de novo both on the law and the facts.

(11) *Indigent Appellant.* If the party against whom any award shall be made as aforesaid, not being the party by whom the rule of reference was taken out, shall apply by petition, to a judge of the court in which such action is commenced, and shall therein set forth that, by reason of poverty, he is unable to pay the costs of the suit, as aforesaid, and shall make affidavit of such facts,

it shall be lawful for such judge, after due notice to the opposite party, if he shall be satisfied of the truth of the statements in such petition, to make an order, that the appeal of such party in the case, shall be good, although the costs shall not be paid by him, as aforesaid.

(12) *Recognizance On Appeal.* The appellant shall by himself, his agent or attorney, with one or more sufficient sureties, be bound in recognizance to the adverse party the condition of which shall be, that if he shall not, in the event of the suit, recover a sum greater, or a judgment more favorable to him than the award of the arbitrators, he shall pay all costs that shall accrue in consequence of said appeal, and \_\_\_\_\_ dollars for every day lost by the adverse party in attending on such appeal.

(13) *Appeal By Minor Or One Who Sues In Representative Character.* In all cases in which executors, administrators or other persons suing or sued in a representative character, or minors, shall be the party appellant from an award, the appeal shall be good, without payment of costs, or entering in cognizance, as aforesaid, if such appellant shall not have been the plaintiff in such cause.

(14) *Recovery Of Appeal Costs.* The costs to be paid by the appellant, as herein required, may nevertheless, be taxed in the appellant's bill, and recovered of the adverse party, if, in the event of the suit, the appellant is entitled to recover costs, agreeably to the provisions of this act: Provided, that the compensation of the arbitrators repaid to the county by appellant as provided by this act, shall not be taxed as costs or recovered from the adverse party.

(15) *Exception To Pre-payment Of Accrued Costs On Appeal.* Section 10 of this statute shall be so construed as to require the payment by the appellant, to the clerk of court, of all costs which have previously accrued, whenever an appeal is entered from an award of arbitrators, excepting where executors, administrators, guardians or trustees are appellants.

(16) *Powers Of Arbitrators.* Arbitrators in every case, as aforesaid, or a majority of them, shall have power:

- (a) To require from either party the production of all such books, papers and documents as they shall deem material to the cause;
- (b) To judge of the competency and credibility of witnesses, and the propriety of admitting any written evidence that may be offered;
- (c) To administer oaths or affirmations to witnesses;
- (d) To adjourn their meetings from day to day, or for a longer time, and also from place to place, if they shall think proper;
- (e) To decide both the law and fact that may be involved in the cause submitted to them;
- (f) The arbitrators shall not be required to make a record of the proceedings before them. If any party shall desire a record, the arbitrators shall provide a reporter and cause a record to be made and the party requesting the same shall pay the cost thereof;
- (g) Each of the arbitrators shall have power to issue subpoenas to witnesses, to appear before them, and if any person who shall have been duly subpoenaed to attend as aforesaid, shall neglect or refuse to attend, a majority of the arbitrators shall have power to issue

an attachment against such person, according to the practice of the courts;

- (h) Arbitrators, or a majority of them, shall also have power to punish, by fine, not exceeding ..... dollars, all persons, whether parties, witnesses or others, who shall be guilty of disorderly conduct in their presence, or who shall insult, disturb or interrupt the said arbitrators, when in session.

(17) *Clerk Of Court May Subpoena Witnesses.* The clerk of court in which the suit shall be pending shall have power to issue subpoenas for witnesses to appear before the arbitrators.

(18) *Compensation Of Arbitrators.* Every arbitrator, shall be entitled to receive the sum of ..... dollars for every day necessarily employed by him in the hearing and determination of the cause submitted to him. The compensation of each member of the Board of arbitrators shall be determined by the court and paid by the county for each case heard upon the filing of the report

and award, if any. Such fees shall not be taxed as costs nor follow the award as other costs.

(19) *Books, Papers Or Documents Withheld.* On the trial of any cause, after an appeal from an award of arbitrators, it shall not be lawful for the appellant to produce as evidence in court, any books, papers or documents, which he had in his power to produce at the time of the arbitration, and withheld from the arbitrators, after being required by the arbitrators to produce the same.

(20) *Depositions.* It shall be the duty of the clerk of court of the proper court, on application by either party, his agent or attorney, to enter a rule, to take the depositions of aged or infirm witnesses, witnesses unable to attend the hearing for good cause, or witnesses out of the state, to be read in evidence, either before the arbitrators, or to the jury, in case of an appeal from an award of arbitrators in the same manner, and subject to the same rules and regulations, as are now observed in the courts of this state.

# Contingent Fee Regulation

## PROPOSAL

The following five-point program is proposed for the regulation of the contingent fee system:

1. The amount of any contingent fee should be strictly regulated by appropriate local court rule or legislation.
2. Every retainer on a contingent basis should be in writing in a fixed format and should be signed by the client.
3. A retainer statement should be filed with the appropriate judicial authority by a retained attorney within a fixed number of days from the date of the written contingent fee retainer.
4. There should be strict control of the division of fees between attorneys, based only upon work performed.
5. Upon completion of the claim or suit an attorney should file an itemized closing statement with the proper judicial authority and a copy thereof must be delivered to the client.

## DISCUSSION

It has been said, and rightly so, that the contingent fee system provides the means through which a man of modest means may gain legal representation by a highly skilled and competent trial counsel. However, there are those who attack the system and claim that it is unfair for a portion of one's legal recovery to be shared with the lawyer who represented him. It must be remembered that the legal system in America is such that the successful litigant does not receive actual legal expenses as part of the damages he recovers. Legal "costs" are recovered, but these are small in comparison to the actual costs incurred in the prosecution or defense of a lawsuit. Therefore, even in those cases in which a contingent fee is not employed, the successful litigant's recovery is diminished by the fee that is paid for legal representation.

At present, no workable approach has been fashioned to allow the taxing of actual legal expenses as an item cost to be recovered by the successful litigant. Until one is, the contingent fee system provides the only means by which a person who is financially unable to retain counsel on

some other basis may have his day in court.

Although the contingent fee system has proved to be beneficial, it is subject to misunderstanding and abuse.<sup>28</sup> Those who abuse it are small in number, yet they bring the entire profession, and especially those who are conscientious in the use of the system into disrepute. Further, its abuse reduces the amount of net recovery by the injured party. By eliminating abuse, the take home award of the injured party will be increased and the "cost" of the tort system reduced proportionately.<sup>29</sup>

The proposal seeks to eliminate the abuse by placing the control of the size of the contingent fee and the supervision of its use with proper legislative or judicial authority. It also seeks to correct some of the misunderstanding about the operation of the system by requiring fee agreements and closing statements to be in writing and by requiring the client to sign the agreement and be given a copy of the closing statement.

## LEGISLATION

### REGULATION OF CONTINGENT FEES<sup>30</sup>

**Contingent Fees.** (1) *Retainer Statement Required.* Every attorney who, in connection with any action or claim for damages for personal injuries or for property damages or for death or loss of services resulting from personal injuries accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in such action, claim or proceedings, whereby his compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof, shall within thirty days from the date of any such retainer or agreement of compensation, sign personally and file with the \_\_\_\_\_ a written statement of such retainer or agreement of compensation, containing the information hereinafter set forth. Such statement may be filed personally by the attorney or his representative at the \_\_\_\_\_

<sup>28</sup>A Study of Contingent Fees in the Prosecution of Personal Injury Claims, 53 Ins Counsel J 197 (Apr 1966) [reprints available from the DRI Milwaukee office]

<sup>29</sup>A study conducted by the Concord Group Insurance Companies of 1968 automobile bodily injury claims revealed that claimants' attorney fees represented 21.8% of the "pure losses" paid and 12.9% of the premiums written.

<sup>30</sup>The sample statute and supporting research for the provision on contingent fee regulation is available from the DRI Milwaukee office.

\_\_\_\_\_ and upon such filing he shall receive a date stamped receipt containing the code number assigned to the original so filed. Such statement may also be filed by ordinary mail only, addressed to:

Statements filed by mail must be accompanied by a self-addressed stamped postal card containing the words "Retainer Statement," the date of the retainer and the name of the client. The \_\_\_\_\_

\_\_\_\_\_ will date stamp the postal card, make notation thereon of the code number assigned to the retainer statement and return such card to the attorney as a receipt for the filing of such statement. It shall be the duty of the attorney to make due inquiry if such receipt is not returned to him within ten days after his mailing of the retainer statement to the \_\_\_\_\_

(2) *Form Of The Retainer Statement.* A statement of retainer must be filed in connection with each action, claim or proceeding for which the attorney has been retained. Such statement shall be on one side of paper 8 1/4" x 14" and be in the following form and contain the following information:

#### Retainer Statement

To  
The State Of \_\_\_\_\_

1. Date of agreement as to retainer \_\_\_\_\_
2. Terms of compensation \_\_\_\_\_
3. Name and home address of client \_\_\_\_\_
4. If engaged by an attorney, name and office address of retaining attorney \_\_\_\_\_
5. If claim for personal injuries, wrongful death or property damage, date and place of occurrence \_\_\_\_\_
6. Name, address, occupation and relationship of person referring the client \_\_\_\_\_

Dated: \_\_\_\_\_, 19\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Yours, etc.

Signature of Attorney

Print or Type \_\_\_\_\_

Attorney \_\_\_\_\_

Office and P. O. Address  
Dept. \_\_\_\_\_ County. \_\_\_\_\_

Dist. \_\_\_\_\_

I hereby acknowledge receipt of a copy of the above retainer statement and certify that it constitutes a statement of my agreement and with the above stated attorney concerning the claim as set forth therein.

Client \_\_\_\_\_

(3) *Retainer Statements Of Co-Counsel.* An attorney retained by another attorney, on a contingent fee basis, as trial or appeal counsel or to assist in the preparation, investigation, adjustment or settlement of any such action, claim or proceeding shall, within fifteen days from the date of such retainer, sign personally and file with the \_\_\_\_\_ a written statement of such retainer in the manner and form as above set forth, which statement shall also contain par-

ticulars as to the fee arrangement, the type of services to be rendered in the matter, the code number assigned to the statement of retainer filed by the retaining attorney and the date when said statement of retainer was filed.

(4) *Retainer Statements Must Have Name Of Attorney Inserted.* No attorney shall accept or act under any written retainer or agreement of compensation in which the name of the attorney was left blank at the time of its execution by the client.

(5) *The Closing Statement.* A closing statement shall be filed in connection with every claim, action or proceeding in which a retainer statement is required, as follows: Every attorney upon receiving, retaining or sharing any sum in connection with a claim action or proceeding subject to this rule shall, within fifteen (15) days after such receipt, retention or sharing, sign personally and file with the \_\_\_\_\_ and deliver to the client, a closing statement as hereinafter provided. Where there has been a disposition of any claim, action or proceeding, or a retainer agreement is terminated, without recovery, a closing statement showing such fact shall be signed personally by the attorney and filed with the \_\_\_\_\_ within thirty (30) days after such disposition or termination. Such statement may be filed personally by the attorney or his representative at the \_\_\_\_\_ and upon such filing he shall receive a date stamped receipt. Such statement may also be filed by ordinary mail only, addressed to:

Statements filed by mail must be accompanied by a self-addressed stamped postal card containing the words "Closing Statement," the date the matter was completed, and the name of the client. The \_\_\_\_\_ will date stamp the postal card, make notations thereon of the code number assigned to the closing statement and return such card to the attorney as a receipt for the filing of such statement. It shall be the duty of the attorney to make due inquiry if such receipt is not returned to him within ten days after his mailing of the closing statement to the \_\_\_\_\_

(6) *Form Of The Closing Statement.* Each closing statement shall be on one side of paper 8 1/4" x 14" and be in the following form and contain the following information:

#### Closing Statement

To The  
The State Of \_\_\_\_\_

1. Code number appearing on Attorney's receipt for filing of retainer statement \_\_\_\_\_
2. Name and address of client \_\_\_\_\_
3. Plaintiffs: \_\_\_\_\_
4. Defendants: \_\_\_\_\_
5. If action commenced: \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_ Court, \_\_\_\_\_ County, File Number \_\_\_\_\_
6. Check items applicable: Settled ( ) ; Claim abandoned ( ) ; Judgment ( ) ; Date of payment \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

7. Gross amount of recovery \$\_\_\_\_\_ of which \$\_\_\_\_\_ was taxable costs and disbursements.
8. Name and address of insurance carrier or person paying judgment of claim \_\_\_\_\_
9. Net amounts: to client \$\_\_\_\_\_; compensation to undersigned \$\_\_\_\_\_; names, addresses and amounts paid to attorneys participating in the contingent compensation \_\_\_\_\_
10. Compensation fixed by: retainer agreement { } ; under schedule ( ) ; or by court { } .
11. If compensation fixed by court:  
Name of Judge \_\_\_\_\_, Court \_\_\_\_\_  
Date of Order \_\_\_\_\_, Index No. \_\_\_\_\_
12. Itemized statement of liens, assignments, claims and expenses charged against client \_\_\_\_\_
13. Itemized statement of the amounts paid or agreed to be paid to others together with the name, address and reason for each payment \_\_\_\_\_
- Dated: \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_
- Yours, etc.

Signature of Attorney  
Print or Type \_\_\_\_\_

Attorney \_\_\_\_\_

Office and P. O. Address \_\_\_\_\_

Dist. \_\_\_\_\_ Dept. \_\_\_\_\_  
County. \_\_\_\_\_

(7) *Signatures Required On The Closing Statement.* A joint closing statement may be served and filed in the event that more than one attorney receives, retains or shares in the contingent compensation in any claim, action or proceeding, in which event the statement shall be signed by each such attorney.

(8) *The Fee Schedule.* (a) Compensation which is equal to or less than the fees scheduled below is deemed to be fair and reasonable. The receipt, retention or sharing of compensation which is in excess of such scheduled fees shall constitute the exaction of unreasonable and unconscionable compensation in violation of Canons \_\_\_\_\_ of the Canons of Professional Ethics of the \_\_\_\_\_, unless authorized by a written order of the court as hereinafter provided.

(b) The following is the schedule of reasonable fees referred to above: either

#### Schedule A

- (i) \_\_\_\_\_ percent of the first one thousand dollars of the sum recovered;<sup>31</sup>
- (ii) \_\_\_\_\_ percent of the next two thousand dollars of the sum recovered;<sup>32</sup>

<sup>31</sup>The percentage is left blank for local determination. The New York rule sets 50% for this provision.

<sup>32</sup>The percentage is left blank for local determination. The New York rule sets 40% for this provision.

- (iii) \_\_\_\_\_ percent of the next twenty-two thousand dollars of the sum recovered;<sup>33</sup>
- (iv) \_\_\_\_\_ percent on any amount over twenty-five thousand dollars of the sum recovered;<sup>34</sup> or

#### Schedule B

A percentage not exceeding \_\_\_\_\_ percent of the sum recovered, if the initial contractual arrangement between the client and the attorney so provides, in which event the procedure hereinafter provided for making application for additional compensation because of extraordinary circumstances shall not apply.<sup>35</sup>

(c) In computing the fee due the attorney (s), such percentage shall be computed on the net sum recovered after deducting taxable costs and disbursements, including expenses for expert medical testimony and investigative or other services properly chargeable to the enforcement of the claim or prosecution of the action. But for the following or similar items there shall be no deduction in computing such percentages: Liens, assignments or claims in favor of hospitals, for medical care and treatment by doctors and nurses, or self-insurers or insurance carriers.

(9) *Fees In Addition To Contract For Extraordinary Expense.* In the event that claimant's or plaintiff's attorney believes in good faith that the foregoing Schedule A, because of extraordinary circumstances, will not give him adequate compensation, application for greater compensation may be made upon affidavit with written notice and an opportunity to be heard to the client and other persons holding liens or assignments on the recovery. Such application shall be made to the judge of the trial court to which the action has been sent for trial; or, if it had not been sent to a court for trial, then to the judge presiding at the \_\_\_\_\_ in which the action had been instituted; or, if no action had been instituted, then to the judge presiding at the \_\_\_\_\_ for the county in the Judicial Department in which the attorney who filed the statement of retainer, pursuant to this rule, has an office. Upon such application, the judge, in his discretion, if extraordinary circumstances are found to be present, and without regard to the claimant's or plaintiff's consent, may fix as reasonable compensation for legal services rendered an amount greater than that specified in the foregoing Schedule A, provided, however, that such greater amount shall not exceed the fee fixed pursuant to the contractual agreement, if any, between the client and the attorney. If the application be granted, the judge shall make a written order accordingly, briefly stating the reasons for granting the greater compensation; and a copy of such order shall be served on all persons entitled to receive notice of the \_\_\_\_\_.

<sup>33</sup>The percentage is left blank for local determination. The New York rule sets 35% for this provision.

<sup>34</sup>The percentage is left blank for local determination. The New York rule sets 25% for this provision.

<sup>35</sup>The percentage is left blank for local determination. The New York rule sets 33 1/4% for this provision.

## Collateral Sources Of Recovery

### PROPOSAL

That the Collateral Source Rule be modified so that evidence of the nature and extent of all benefits and services received or to be received by the claimant as a result of the alleged injuries and damages he sustained be admissible. That evidence of the remarriage of a surviving spouse be likewise admissible in an action for wrongful death.

### DISCUSSION

There is no question that the Collateral Source Rule has a marked effect on the problem of automobile liability insurance cost. Actuarial studies indicate that elimination of double payment of certain items in the average personal injury claim would result in premium savings of between 15 and 19 percent.<sup>36</sup> It has been estimated that the portion of the American population that is covered by collateral benefits providing medical and hospital costs, wage continuation and the like is between 70 and 85 percent and is constantly rising.<sup>37</sup> The continuation of the Collateral Source Rule means that seven or eight of every ten successful claimants will recover at least twice for some economic losses. As inflation forces the cost of medical and hospital care and wages to new highs and as more and more persons become covered by these collateral benefits, the cost to the insurance buying public of continuing the Collateral Source Rule will become even more burdensome.

In the trial of a personal injury action the application of the Collateral Source Rule leads to inequitable results. The plaintiff is allowed to introduce evidence of the economic "loss" sustained as a result of his injury. This will include such items as expenses for medical treatment, hospital and nursing care, prosthetic devices, rehabilitation services and the wages which "would" have been earned during the period he was away from his employment. Even if all of these claimed expenses have been paid at the time of trial by in-

surance or other collateral sources, the defense is prohibited from introducing evidence as to the payment. Thus the jury is led to believe that the plaintiff had to personally pay these expenses or that he has been subjected to continuous financial worry because they are still unpaid at the time of trial. If the jury finds for the plaintiff on the question of liability, this mistaken belief cannot help but be a factor in the jury's determination of the amount to be awarded to the plaintiff for the pain, suffering and inconvenience which were occasioned by the defendant's conduct. There is no question that a more equitable attitude would be exhibited if the jury knew that the plaintiff was not financially strapped pending trial, because of the collateral benefits which were available to him.

The Collateral Source Rule also proves inequitable in another situation. Most jurisdictions hold that evidence of the remarriage of a surviving spouse is inadmissible in actions for wrongful death.<sup>38</sup> In some instances the courts even go to the extent of condoning perjury by insisting that a remarried widow must take the oath and at all times during the trial be referred to by the surname of her late husband. With the rule being applied in these cases, the plaintiff is allowed to introduce evidence, often by expert economists, that had the deceased lived he would have earned a certain amount of money during his working life. Computations are made to arrive at a lump sum figure for pecuniary loss which, if invested, would yield the "widow" a yearly income equivalent to that her late husband would have provided had he lived. When the action is for the death of a wife similar evidence is introduced to show the cost to the surviving husband to hire a housekeeper, cook, babysitter, etc., to replace the services which would have been performed by his wife had she lived. When the wrongful death action is solely for pecuniary loss and evidence of remarriage is excluded, the jury, in appraising the loss, does not know that there is a new husband whose earnings

<sup>36</sup>CRISIS IN CAR INSURANCE 130 and 185 (Keeton, O'Connell & McCord ed 1968)

<sup>37</sup>See notes 11 and 12 *supra*

<sup>38</sup>Shields & Giles, *Remarriage and the Collateral Source Rule*, 36 Ins Counsel J 354 (July 1969)

will supplant lost income or a new wife who will perform the services which the plaintiff is claiming as loss. The courts that prevent introduction of remarriage resort to the windfall argument and confuse an action designed to compensate actual loss for one intended to punish the defendant.<sup>39</sup> It may well be that the reason this evidence is excluded is an attempt to shape an action designed to compensate for pecuniary loss into one which also compensates for the emotional suffering occasioned by the loss of a loved one. However, if compensation for this emotional loss is proper, evidence of remarriage is most relevant. Should a jury be misled into believing that the surviving spouse claiming emotional suffering over the death of a husband or wife will carry that grief for life when in fact, at the time of trial, a new home and hearth have replaced the old?

What is proposed is that the jury be given all the facts about the case before them. That, when they are charged with finding just compensation for actual, pecuniary loss, or even emotional loss, all

material evidence as to the true nature of that loss be presented. We have faith in the jury system and believe that, given all the evidence, an equitable determination of actual damages will be made. To this end we propose that the Collateral Source Rule be modified to allow the introduction of all evidence relative to the nature and extent of the benefits and services received or to be received by the claimant as a result of the alleged injuries and damages he sustained.

## LEGISLATION

### MODIFICATION OF THE COLLATERAL SOURCE RULE<sup>40</sup>

**Evidence Of Collateral Benefits.** In any action in which compensatory damages are sought, the party against whom the action is brought shall be entitled to the admission of evidence as to the nature and extent of any benefits or services received or to be received by the party seeking compensation which were occasioned by the injuries and damages alleged to have been sustained as a result of the occurrence which is the subject matter of the action. Likewise, in any action for wrongful death, evidence as to the remarriage of a surviving spouse shall be admissible.

<sup>39</sup>See, e.g., *Dubil v. Lebate*, 245 A2d 177 (NJ 1968)

<sup>40</sup>Sample statutes and supporting research for the provision on collateral source are available from the DRI Milwaukee office.

## Comparative Negligence

### PROPOSAL

That the determination of whether the rule of contributory negligence should be abandoned is a matter for local determination. However, when the rule is to be changed, the present Wisconsin comparative negligence rule and procedure is preferable and should be substituted.

### DISCUSSION

In the majority of jurisdictions the rule still remains that contributory negligence on the part of a person seeking recovery in a tort action bars his recovery. In the other jurisdictions the rule of comparative negligence (fault) has been adopted.<sup>41</sup> There has been considerable debate over the merits of each system. It is relatively easy to find support for either the position that contributory negligence be retained or that it should be discarded.<sup>42</sup> We believe that the determination as to whether comparative negligence should be adopted is a matter for local determination. Only in this way can all the practical problems which would result from such a change be properly evaluated and considered in light of their impact upon the practice and existing laws of a jurisdiction. Therefore, adopting a national position that each jurisdiction should have comparative negligence is unwise.

However, it is practical to suggest, that where a change is to be made, the present Wisconsin comparative negligence rule and procedure is preferable. The relative mer-

its of the Wisconsin comparative negligence rule and procedure are discussed at length in the supporting research which accompanies the DRI sample legislation on the subject.<sup>43</sup> It is shown to be the most just and workable of the comparative negligence systems, based upon nearly 40 years of practical operation and judicial interpretation.<sup>44</sup>

### LEGISLATION

#### THE COMPARATIVE NEGLIGENCE RULE

**Contributory Negligence.** Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.<sup>45</sup>

<sup>43</sup>The sample statute and supporting research for the provision on comparative negligence is available from the DRI Milwaukee office.

<sup>44</sup>Ghiardi & Hogan, *Comparative Negligence — The Wisconsin Rule and Procedure*, 18 *Defense L J* 537 (Oct 1969)

<sup>45</sup>Wisconsin also has procedures for special verdicts and for contribution among joint tortfeasors. Minnesota adopted the Wisconsin comparative negligence rule when Chapter 624 of the Laws of 1969 was approved on May 23, 1969. It provided for special verdicts and contribution by adding the following language to the statute set forth above:

The court may, and when requested by either party shall, direct the jury to find separate special verdicts determining the amount of damages and the percentage of negligence attributable to each party; and the court shall then reduce the amount of such damages in proportion to the amount of negligence attributable to the person recovering. When there are two or more persons who are jointly liable, contribution to awards shall be in proportion to the percentage of the negligence attributable to each, provided, however, that each shall remain jointly and severally liable for the whole award.

<sup>41</sup>Arkansas, Georgia, Hawaii, Massachusetts, Maine, Minnesota, Mississippi, Nebraska, New Hampshire, South Dakota, Wisconsin.

<sup>42</sup>Compare Lambert, *Case For Comparative Negligence*, 2 *Trial Lawyers Q* 16 (1965) with Powell, *Contributory Negligence: A Necessary Check on the American Jury*, 43 *ABA J* 1005 (Nov 1957)

## Advance Payments

### PROPOSAL

That liability insurers be given the right to make advance payments for economic loss to claimants without the possibility that the claimants will be allowed to introduce evidence of the advance payments on the issue of liability during subsequent litigation. That liability insurers making advance payments be allowed to take a credit therefore against any subsequent judgment recovered by the claimant or settlement made with him.

### DISCUSSION

The insurance industry has voluntarily undertaken the development of many innovative claims handling techniques in recent years. One of the most significant has been the advance payment technique. In cases in which final settlement of the full claim cannot be made at once, this procedure has allowed the insurer to make periodic payments to the claimant for medical expenses, wage loss and for property damage, often without taking any form of release. There appears to be no argument with the position that this procedure is valuable and worthwhile.<sup>46</sup> With expanded use of the advance payment technique, coupled with the proposed first party insurance coverage, the criticism that the present system delays payments for economic loss to persons who are in need should have no further foundation.

The legislative proposal would prevent evidence of the advance payment from being introduced in a lawsuit and would give the insurer making the payment the right to a credit against any subsequent judgment or settlement.

<sup>46</sup>*Advance Payments — View of Plaintiffs' Counsel*, 9 For The Defense 59 (Oct 1968); *New Ideas for Personal Injury Claim Settlements*, 8 For The Defense 41 (June 1967); *Advance Payment Techniques*, 7 For The Defense 57 (Oct 1966)

### LEGISLATION

#### EVIDENCE REGARDING ADVANCE PAYMENTS<sup>47</sup>

**Advance Payments.** (1) In any action in which the defendant, his insurer or any other person has made an advance payment to or on behalf of any claimant prior to trial, any evidence of or concerning said advance payment shall be inadmissible in evidence (or as an admission against liability) in any action brought by the claimant, his survivors or personal representative, to recover damages for personal injuries or for the wrongful death of another, or for property damage or destruction.

(2) In the event, however, that such action results in a verdict in favor of the claimant (in excess of payments) the defendant shall be allowed to introduce evidence of such payments after the verdict has been rendered and the court shall then reduce the amount awarded to the claimant by the amount of payments made prior to trial.

(3) For the purpose of paragraph one (1) above, the word "advance payment" shall be construed to include, but not limited to the following: Any partial payment, loan or settlement made by any person, corporation or insurer thereof, to another, which is predicated upon possible tort liability or under the contractual obligations of the insurer to the injured party or on his behalf, e.g., medical, surgical, hospital, rehabilitation services, facilities or equipment, loss of earnings, out-of-pocket expenses, death claims, loans, bodily injury or property damage, loss or destruction.

(4) This statute shall be applicable to any action commenced in this state, regardless of the situs of the accident, location of the property or residence of the parties.

(5) The making of an advance payment shall not interrupt the running of the Statute of Limitations, provided that any person, including any insurer, who makes such advance payment, shall at the time of the first payment, notify the recipient thereof in writing of the date the applicable Statute of Limitations will expire.

(6) If the defendant does not desire to introduce evidence of such payments after the verdict has been rendered, he shall be allowed to introduce such evidence during the trial, and the jury shall be instructed to take such payments into consideration in determining the amount of damages, if any, awarded to the plaintiff.

<sup>47</sup>Sample statutes and supporting research for the provision on advance payments are available from the DRI Milwaukee office.

## Elimination Of Ad Damnum

### PROPOSAL

That any pleading demanding relief in the form of unliquidated damages may only make a prayer for general relief and state that the amount claimed is within the minimum and maximum jurisdictional limits of the court.

### DISCUSSION

Historically, the *ad damnum* clause was developed as a means by which the litigant could be shown to be demanding money damages instead of some other form of relief. Its role in the litigation process was actually a minor one. Today, the only practical purpose served by the clause is in the determination of whether the action is within the jurisdictional limits of the court involved.

The present use of the *ad damnum* in personal injury litigation has given rise to much abuse and dissatisfaction.<sup>48</sup> Lawyers admit that the amount of money demanded in a complaint has no real relation to the sum which would be accepted as a reasonable settlement. A claimant who sees his lawyer demand a huge sum in a pleading has difficulty understanding why acceptance of a much smaller amount is recommended by the same lawyer as a settlement. A person who is involved in a minor accident and is later served with a pleading demanding an excessive dollar amount tends to view the lawyer as one engaged in a form of extortion. The news media pick up a multi-figure demand and report it to the public as a "front page" news item but give little if any attention to the final determination of the case if it

results in an award or settlement for a conservative amount. Thereby the public receives a distorted view of the "value" of personal injury claims.

Since many states have trial courts with varying jurisdictional limits depending upon the amount in suit, there is a need for the pleadings to indicate whether the amount of unliquidated damages sought are within that jurisdiction. The proposal seeks to do this without the necessity of having those pleadings state an exact dollar demand. Absent the need to establish that the action is within the jurisdiction of the court, there is no practical reason for the continuation of the use of the dollar demand *ad damnum*.

### LEGISLATION

#### ELIMINATION OF THE AD DAMNUM CLAUSE<sup>49</sup>

**Claims For Relief.** (1) Any pleading demanding relief for unliquidated damages shall without claiming any specific sum, set forth only whether the amount is in excess of, or not in excess of \$10,000, and that the total of said sum claimed is within the minimum and maximum jurisdiction of the court.<sup>50</sup>

(2) The court on its own motion or motion of any party may, by deposition, pre-trial conference, hearing or otherwise, determine the amount actually in controversy and enter an order of reference to a Board of Arbitration or of transfer to another court, or such other order as may be appropriate. For the purpose of appeal, jurisdiction of the appellate court will be fixed according to such court order, or the judgment obtained, whichever is the greater.

<sup>48</sup>Sample statutes and supporting research for the provision on the elimination of the *ad damnum* clause are available from the DRI Milwaukee office.

<sup>50</sup>The reference to \$10,000 in subsection (1) is necessary to determine if the case is subject to federal removal jurisdiction.

<sup>48</sup>See *The Ad Damnum Clause - The Problem and Solution* (DRI monograph Aug 1965)

## Fraudulent Claims

### PROPOSAL

Strict sanctions should be imposed upon those who intentionally make claims for personal injury or property damage known by them to be false or fraudulent and upon those who assist in the making of such claims with knowledge of their false or fraudulent character.

### DISCUSSION

Unfortunately, there are a small number of persons who look upon the personal injury reparation system as a means of making easy money. Although the number of false or fraudulent claims made annually is small in comparison to the total number of claims, they do constitute a serious threat to the integrity of the legal system. The money they take from the system is taken at the expense of the premium paying public and those whose personal injury claims are valid.

The only significant means which can be employed to combat the filing of false and fraudulent claims is to provide strict penalties for those who engage in this practice. It is proposed that where local laws

are not adequate to cope with this problem, strong legislative measures be enacted.

### LEGISLATION

#### PENALTIES FOR BRINGING FRAUDULENT CLAIMS

**Fraudulent Claims.** (1) Whoever, with the intent to defraud, obtains or assists in obtaining any money or other thing of value from any other person or any insurance company in this state by falsely or fraudulently representing that an injury has been sustained or damage to property has occurred, or the extent of said injury or damage, may be fined not more than \$2,500 or imprisoned not more than 5 years or both.

(2) Whoever, with the intent to defraud, attempts to obtain, or assists in attempting to obtain any money or other thing of value from any other person or any insurance company in this state by falsely or fraudulently representing that an injury has been sustained or damage to property has occurred, or the extent of said injury or damage, may be fined not more than \$2,500 or imprisoned not more than 5 years or both.

(3) In order to establish that there exists an intent to falsely and fraudulently represent an injury or damage to property, or the extent thereof, it shall be admissible to present a history of prior convictions for the violation of this statute or similar crimes committed within a previous five-year period; but no such evidence shall be essential to sustain a successful prosecution.

## Efficient Use Of Legal Effort

### PROPOSAL

That those practices and procedures which provide for limitation of the right to voluntary dismissals or nonsuits, the right to a split trial on issues of liability and damages, modification of appeal bond rules, summary judgment, mental and physical examinations of litigants, demands to admit the genuineness of documents or relevant facts, and offers of settlement, judgment and damages should be adopted in those jurisdictions which do not have such rules and also in those jurisdictions whose present rules are not as workable as those which are proposed.

### DISCUSSION

A number of specific proposals have been grouped into this section. As its title implies, their purpose is to make more efficient use of the legal effort — to employ the trial for only those cases and issues that can be resolved in no other way and to see to it that the trial is as efficient a process as possible.

Experienced trial lawyers are aware that much can be done to save the time and effort of judges, court personnel, litigants, witnesses and attorneys.<sup>51</sup> The enactment of any or all of these proposals would, each in its own way, make the preparation and trial of a personal injury case less costly, less cumbersome and less time consuming. Other proposals to streamline the judicial process can be devised and proposed; however, the legislation or court rules suggested here would be a major step forward.

### LEGISLATION

#### LIMITATIONS UPON VOLUNTARY DISMISSALS OR NONSUITS<sup>52</sup>

**Voluntary Dismissal Or Nonsuit.** (1) An action may be dismissed by the plaintiff or other party asserting an affirmative claim, in the form of a

<sup>51</sup>See, e.g., *Defense Research Committee — Report and Recommendations for the Most Efficient Use of the Legal Effort*, 90 Ins Counsel J 519 (Oct 1963) [reprints available from the DRI Milwaukee office]

<sup>52</sup>Sample statutes and supporting research for the provision on voluntary dismissal or nonsuit are available from the DRI Milwaukee office.

counterclaim, cross-claim or third-party claim without order of the court by (a) filing a notice of dismissal at any time before joinder of issue, or (b) filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal shall be without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when: (a) filed by a plaintiff who has once dismissed in any court of this state, or of any other state, or in any court of the United States, based on or including the same claim; and (b) if plaintiff or other party shall fail to perfect an appeal within 60 days after the motion to vacate or set aside the order of dismissal is ruled upon by the trial court; or (c) plaintiff shall fail to refile said cause within one year after the first dismissal.

(2) Except as provided in paragraph (1), an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If an independent affirmative claim has been filed by any party other than plaintiff and served upon plaintiff prior to the service of plaintiff's motion to dismiss, the action shall not be dismissed against the other party's objection unless the counterclaim, cross-claim or third-party claim can remain pending for independent adjudication by the court.

(3) Unless otherwise specified in the order, a dismissal under paragraph (2) is with prejudice. The court may also condition its order to cause plaintiff to pay all the legal expense of suit in order to be able to refile said cause.

#### SEPARATE TRIALS ON ISSUES OF LIABILITY AND DAMAGES<sup>53</sup>

**Split Trials.** (1) In any action involving personal injury, and all other civil litigation wherein the issue of liability may be adjudicated as a prerequisite to the determination of any or all other issues, in a jury or non-jury case, a separate trial may be had upon such issue of liability, upon motion of any of the parties, or at the Court's discretion, in any claim, cross-claim, counterclaim or third-party action.

(2) In the event liability is sustained, the Court may recess for pre-trial or settlement conference, or proceed with the trial on any or all of the remaining issues before the Court, before the same jury or before another jury as conditions may require and the Court shall deem best.

(3) The Court, however, may proceed to trial upon all or any combination of issues if, in its discretion, and in furtherance of justice, it shall appear that a separate trial will work hardship upon any of the parties or will result in protracted or costly litigation.

<sup>53</sup>Sample statutes and supporting research for the provision on split trials are available from the DRI Milwaukee office.

### MODIFICATION OF APPEAL BOND PROCEDURES<sup>34</sup>

**Supersedes Bonds.** If an appeal is taken from a judgment or order entered against an insured in any action which is defended by an insurance corporation, or other insurer, on behalf of the insured under a policy of insurance the limit of liability of which is less than the amount of said judgment or order, all proceedings to enforce the judgment or order to the extent of the policy coverage shall be stayed without court order, pending the appeal, and no action shall be commenced or maintained against the insurer for payment under the policy pending appeal, where the insurer:

- (a) Files with the clerk of court in which the judgment or order is entered, a sworn statement of one of its officers, describing the nature of the policy and the amount of coverage, together with a written undertaking that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal dismissed, the insurer shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed, to the extent of the limit of liability in the policy, plus interest and costs;
- (b) Serves a copy of such sworn statement and undertaking upon the judgment creditor or his attorney; and
- (c) Delivers or mails to the insured at the latest address of the insured appearing upon the records of the insurer, written notice that the enforcement of such judgment or order, to the extent that the amount it directs to be paid exceeds the limit of liability in the policy, is not stayed in respect to the insured. A stay of enforcement of the balance of the amount of the judgment or order may be imposed by giving an undertaking as provided in other cases, in an amount equal to that balance.

### PROVISIONS FOR SUMMARY JUDGMENT PROCEDURE<sup>35</sup>

**Summary Judgment.** (1) *Motion For Summary Judgment.* Any party to an action may move with or without supporting affidavits for a summary judgment in his favor on all or any part of his claim, counterclaim, cross-claim or third-party claim, after the time for filing a responsive pleading shall have expired, and in no case shall such motion be timely until the defendant shall have answered.

(2) *Grounds.* The motion for summary judgment shall state that the moving party is entitled to judgment in his favor because, except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is therefore entitled to judgment as a matter of law.

(3) *Motion And Proceedings Thereon.* A motion for summary judgment may be supported by affidavits, and the opposing party, prior to the day

<sup>34</sup>Sample statutes and supporting research for the provision on supersedeas bonds are available from the DRI Milwaukee office.

<sup>35</sup>Sample statutes and supporting research for the provision on summary judgment are available from the DRI Milwaukee office.

of hearing, may serve opposing affidavits. The affidavits submitted by either party shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. Such affidavits, together with the pleadings, depositions, admissions and documentary evidence then filed in the action or submitted by the parties shall be considered by the court at the hearing. Judgment shall be rendered forthwith if the pleadings, depositions, admissions and other documentary evidence show that any party is entitled to judgment as a matter of law or if the affidavits or other proof show that there is no genuine issue of fact. If it appears that the opposing party rather than the moving party is entitled to judgment, the court may render summary judgment in his favor without the necessity of a motion therefor.

(4) *The Effect Of A Partial Order.* If an application for summary judgment is denied or if the judgment rendered does not dispose of the entire action or grant all of the relief demanded, the court shall fix the time for further pleading or amendment, if any is necessary. By examining the evidence before it and by interrogating counsel, the court shall ascertain what material facts are without substantial controversy, including the extent to which the amount of damages or other relief is not in dispute, and such facts will be deemed established for all purposes in the action. In lieu of such order the court may treat the hearing and any continuation thereof as a conference, at the conclusion of which the judge shall prepare a summary of results specifically covering each of the items stated in the rules on pre-trial conferences.

(5) *Appealability Of Interim Orders.* No findings or orders of the court shall be appealable, unless such order fully and finally determines all the issues in the case, except when the court shall determine the issue of liability or damages separately, in which case, the order or finding of liability or damages shall be appealable and the final determination of the cause shall be suspended, or proceed according to such order as the court may deem just.

### PHYSICAL AND MENTAL EXAMINATIONS — PHYSICIAN PATIENT PRIVILEGE<sup>36</sup>

**Physical And Mental Examination Of Persons.**

(1) *Order of Examination.* When the mental or physical condition or the blood condition of a party, or of an agent of a party, or of a person under control of a party, is in controversy, the court in which the action is pending may order the party to submit to, or produce such agent or person for, a mental or physical or blood examina-

<sup>36</sup>Sample statutes and supporting research for the provisions on physical and mental examinations and the physician patient privilege are available from the DRI Milwaukee office. See also, Wienke & Hogan, *The Physician Patient Privilege in Personal Injury Litigation — A Proposed Reform* (DRI monograph July 1968)

tion by a physician. The order may be made only on motion for good cause shown and upon notice to the party or person to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is made.

- (2) *Report Of Findings.* (a) If requested by the party against whom an order is made under Section 1 or by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions, together with like reports of all earlier examinations of the same condition. After such request and delivery, the party causing the examination to be made shall be entitled, upon request, to receive from the party or person examined a like report of any examination, previously or thereafter made, of the same mental or physical or blood condition. If the party or person examined refuses to deliver such report, the court, on motion and notice, may make an order requiring delivery on such terms as are just, and, if a physician fails or refuses to make such a report, the court may exclude his testimony if offered at the trial.
- (b) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the adverse party waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him or the person under his control in respect of the same mental or physical or blood condition.
- (c) This subsection applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subsection does not preclude discovery of a report of an examining physician in accordance with the provisions of any other statute or rule.

**Physician Patient Privilege.** (1) *Definitions.*

- (a) "Physician." As used in this section, "physician" means a person authorized or reasonably believed by the patient to be authorized, to practice medicine in the state or jurisdiction in which the consultation or examination takes place.
- (b) "Patient." As used in this section, "patient" means a person who, for the sole purpose of securing preventive, palliative or curative treatment, or a diagnosis preliminary to such treatment, of his physical or mental condition, consults a physician, or submits to an examination by a physician.
- (c) "Confidential communication between patient and physician." As used in this section, "confidential communication between patient and physician" means information, including information obtained by an examination of the patient, transmitted between a patient and his physician in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present

to further the interest of the patient in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the physician is consulted, and includes advice given by the physician in the course of that relationship.

- (d) "Holder of the privilege." As used in this section, "holder of the privilege" means:
- (i) The patient when he has no legal representative.
  - (ii) The legal representative of the patient, when the patient is dead, or when another person has custody or legal control over the patient.

(2) *The Privilege.* In the absence of a consent, waiver, or stipulation by the holder of the privilege to the contrary, and except as otherwise provided in this section, the holder of the privilege, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and physician if the privilege is claimed by:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the physician at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

(3) *Exception.* There is no privilege under this section as to a communication relevant to an issue concerning the condition of the patient if such issue has been tendered by:

- (a) The patient;
- (b) Any party claiming for, through or under the patient;
- (c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party;
- (d) A party in an action brought for damages for the injury or death of the patient.

(4) *Medical Disclosures.* When a party mentioned in the above Subsection (3) tenders the issue of the condition of a patient under the above Subsection (3), such party within ten (10) days of written request by any other party

- (a) Shall furnish to the requesting party copies of all medical reports previously or thereafter made by any treating or examining medical expert, and
- (b) Shall provide written authority signed by the party of whom the request is made to permit the inspection and disclosure of all hospital or medical records and information, concerning the physical, mental or blood condition of such patient as to whom above Subsection (3) applies.

Disclosures under this Rule shall include the conclusions of such treating or examining medical expert.

This subsection does not preclude discovery of any medical information in accordance with the provision of any other statute or rule.

### DEMAND TO ADMIT GENUINENESS OF DOCUMENTS OR FACTS<sup>87</sup>

**Request for Admission.** (1) After commencement of an action a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request, or of the truth of any relevant matters of fact set forth in the request. If a plaintiff desires to serve a request within 20 days after commencement of the action, leave of court, granted with or without notice, must be obtained. In all other cases, the written request for admission of the genuineness of documents or other facts shall be made no later than four weeks prior to the date set for trial of the action, except upon notice, motion and leave of the trial court for cause shown. Copies of the documents shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 20 days after service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either:

- (a) A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters; or,
  - (b) Written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.
- (2) **Effect of Admission:** Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may it be used against him in any other proceeding.<sup>88</sup>
- (3) **Expenses on Refusal to Admit:** If a party, after being served with a request under the above rule to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter

<sup>87</sup>The sample statute and supporting research for the provision on the demand to admit the genuineness of documents or facts is available from the DRI Milwaukee office.

<sup>88</sup>Paragraph (2) is included, but any drafter is admonished to examine the policy regarding admissions of facts or documents under applicable state law. Inclusion of this paragraph is therefore expressly discretionary.

of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorneys fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

### OFFERS OF JUDGMENT, DAMAGES OR SETTLEMENT<sup>89</sup>

**Offer Of Judgment.** (1) After issue is joined and no later than four weeks before the trial date, except upon motion, notice and due cause shown the defendant-party (which shall include the parties whether denominated as defendant by reason of the complaint, counterclaim or third-party claim) may serve upon the plaintiff and his counsel, a written offer to allow judgment to be taken against him for the sum, or property, or to the effect therein specified, with costs. If the plaintiff accepts the offer and serves notice thereof in writing, before acceptance, and within 20 days, he may file the offer, with proof of service of the notice of acceptance and the clerk must thereupon enter judgment accordingly, provided the summons and complaint have been filed. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of judgment is not accepted and the plaintiff fails to recover a more favorable judgment, he shall not recover costs, but the defendant-party shall recover costs as hereinafter defined in section (4).

(2) **Offer Of Damages.** After issue is joined but before trial the defendant-party may serve upon the plaintiff and his counsel, a written offer that if he fails in his defense, the damages be assessed as a specified sum. If the plaintiff accepts the offer and serves notice thereof in writing before trial and within 20 days, and prevails upon the trial, either party may file proof of service of the offer and acceptance and the damages will be assessed accordingly. If notice of acceptance is not given the offer cannot be given as evidence nor mentioned on the trial. If the offer is not accepted and if damages assessed in favor of the plaintiff do not exceed the damages offered, the defendant-party shall recover his costs, as set forth hereinafter in section (4).

(3) **Offer Of Settlement.** After issue is joined but no later than four weeks prior to the trial date, except upon motion, notice and due cause shown, the plaintiff may serve upon the defendant and his counsel, a written offer of settlement. If the defendant accepts the offer and sends notice thereof in writing before trial and within 20 days, he may file the offer with proof of service of the notice of acceptance and the clerk must thereupon enter judgment accordingly. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of settlement is not accepted and the plaintiff prevails for the amount of the offer of settlement or in excess of such offer of settlement, the plaintiff shall recover his costs, as set forth in section (4), if such costs are not ordinarily assessed against the defendant under other state statutes or court rules.

<sup>89</sup>The sample statute and supporting research for the provision on offers of judgment, damages or settlement is available from the DRI Milwaukee office.

- (4) *Costs.* (a) The term "costs" in the above rule shall include the expenses properly chargeable to the presentation of the case, by either party, and means those expenses, including a reasonable attorney fee, made necessary by the nature of the action and which are in addition to the ordinary items of expenses attributable to the conduct of the attorney's practice, including but not exclusive of, expert witness fees, investigation, preparation of evidence for trial and such costs properly chargeable under any other statute, such as suit fees, witness fees, mileage, etc.
- (b) Attorneys fees awarded to either party shall not be in excess of those previously contracted for by the parties and their counsel. Plaintiff's attorney fees shall be governed by any contingent fee agreement that exists between plaintiff and his counsel, but shall not exceed the minimum bar association per diem fees for time in actual litigation. Defendant's attorney fees shall be based on the same fee schedule.

## Regulation Of Awards For Pain And Suffering

### PROPOSAL

That an attempt be made to formulate a plan which will serve as a guide to the appraisal of fair compensation for pain, suffering and inconvenience which result from the injury sustained through the fault of another.

### DISCUSSION

Many of the proposals which seek to modify the existing automobile accident reparations system have in common a limitation on the right to recover damages for pain and suffering. The Keeton-O'Connell plan would eliminate the right to such a recovery for those whose damage for pain and suffering is less than \$5000.<sup>60</sup> The American Insurance Association plan would do away with this right of recovery completely.<sup>61</sup> The Cotter proposal<sup>62</sup> and the Quick Settlement Option plan<sup>63</sup> that was developed and offered for consideration by the ABA Special Committee on Automobile Accident Reparations set up formulae to be applied in certain cases so as to limit damages for pain and suffering to a multiple of medical expenses. The common thread that may be pulled from all of these proposals and plans is that automobile insurance costs could be lowered if the recoverable damages for pain and suffering were in some way reduced or eliminated. Interestingly enough, these proposals and plans focus solely on the automobile accident victim for the elimination or limitation of pain and suffering awards. All persons injured as the result of negligent or intentional conduct not associated with the operation of an automobile would still be able to seek full compensation for pain and suffering if any of these plans or proposals became operative.

We believe that pain and suffering should continue to be compensable in all

personal injury actions. A person who suffers pain, discomfort and inconvenience as the result of the carelessness or intentional conduct of another sustains a loss as real as the medical and hospital expenses incurred to alleviate the injury which caused them. A person should not be denied recovery for the pain and suffering he has endured simply because its severity does not measure up to some artificial quantum. Pain is just as real and dreadful to the person who endures it for one day as it is for the one who must withstand it for a week or month. Further, pain is an individual thing and varies with each person. This variation is to be considered and not discarded as it would be with a formula approach.

While we believe that a person should continue to receive full compensation for tortiously caused pain and suffering, we also believe that an attempt should be made to formulate a plan which would serve as a guide to the appraisal of fair compensation for this element of damage. The present system has been criticized because juries have no fixed standard to use in assessing an award for pain and suffering. We are convinced that juries have been performing their function well without a fixed standard; however, we believe that their task could be made more easy if some fair and objective guide lines were available for their use.

The Cotter proposal and the Quick Settlement Option of the ABA Special Committee were attempts to develop such a standard. Under these proposals an award for pain and suffering is computed on a formula based upon a multiple of the claimant's medical expenses. Such an approach does offer ease in computation of the award. However, it does have shortcomings. In many instances medical expenses have little relation to the severity of the pain and suffering that has been endured. Therefore, strict adherence to such a formula, without any consideration of the claimant's individual experience of pain and suffering, would lead to under-compensation for some claimants and over-

<sup>60</sup>Keeton & O'Connell, note 1 *supra* at 7

<sup>61</sup>AIA Report, note 15 *supra* at 5

<sup>62</sup>House Bill 7107, Conn Gen Assembly (Jan Sess 1969)

<sup>63</sup>Report of the American Bar Association Special Committee on Automobile Accident Reparations, at 101 (June 1969)

compensation for others. This artificial formula approach would also produce a temptation to build up medical expenses so that the award for pain and suffering would be greater.

The artificial formula approach then has its drawbacks. Justice cannot be measured with a yardstick or a slide rule. What is needed is a standard to guide the jury in its assessment of damages for pain and suffering which is not artificial but which

takes into account the individual differences of claimants and their individual experiences of pain and suffering. To our knowledge serious research has never been conducted in this area. We will devote research efforts and also seek the assistance of others in an attempt to develop such a standard or standards. We do not believe that this will be an easy task, but in light of the solutions to the problem which have been offered to date it is a necessary task.



UNIVERSITY OF  
TORONTO LIBRARY



UNIVERSITY LIBRARY  
OF THE  
UNIVERSITY OF TORONTO



SECRETARY LIBRARY



UNIVERSITY LIBRARY





# AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

---

## HEARINGS BEFORE THE COMMITTEE ON COMMERCE UNITED STATES SENATE NINETY-SECOND CONGRESS

FIRST SESSION

ON

**S. 945**

UNIFORM MOTOR VEHICLE INSURANCE ACT

**S. 946**

MOTOR VEHICLE GROUP INSURANCE ACT

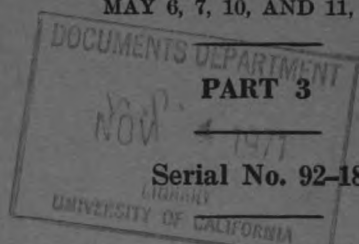
**S. 976**

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

**S. Con. Res. 23**

CONGRESSIONAL CALL FOR STATE ACTION

MAY 6, 7, 10, AND 11, 1971



Printed for the use of the Committee on Commerce



100

# **AUTOMOBILE INSURANCE REFORM AND COST SAVINGS**

---

## **HEARINGS BEFORE THE COMMITTEE ON COMMERCE UNITED STATES SENATE NINETY-SECOND CONGRESS**

**FIRST SESSION**

**ON**

**S. 945**

**UNIFORM MOTOR VEHICLE INSURANCE ACT**

**S. 946**

**MOTOR VEHICLE GROUP INSURANCE ACT**

**S. 976**

**MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT**

**S. Con. Res. 23**

**CONGRESSIONAL CALL FOR STATE ACTION**

---

**MAY 6, 7, 10, AND 11, 1971**

---

**PART 3**

---

**Serial No. 92-18**

---

**Printed for the use of the Committee on Commerce**



**U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1971**

**64-345 O**

## COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island

VANCE HARTKE, Indiana

PHILIP A. HART, Michigan

HOWARD W. CANNON, Nevada

RUSSELL B. LONG, Louisiana

FRANK E. MOSS, Utah

ERNEST F. HOLLINGS, South Carolina

DANIEL K. INOUE, Hawaii

WILLIAM B. SPONG, Jr., Virginia

NORRIS COTTON, New Hampshire

WINSTON PROUTY, Vermont

JAMES B. PEARSON, Kansas

ROBERT P. GRIFFIN, Michigan

HOWARD H. BAKER, Jr., Tennessee

MARLOW W. COOK, Kentucky

MARK O. HATFIELD, Oregon

TED STEVENS, Alaska

FREDERICK J. LORDAN, *Staff Director*

MICHAEL PERTSCHUK, *Chief Counsel*

S. LYNN SUTCLIFFE, *Staff Counsel*

ARTHUR PANKOFF, Jr., *Minority Staff Director*

PETER POWELL, *Minority Professional Staff*

(II)

# CONTENTS

## CHRONOLOGICAL LIST OF WITNESSES

MAY 6, 1971		Page
Joost, Robert H.....		897
Article.....		919
Maisonpierre, Andre, vice president and manager, American Mutual Insurance Alliance, Washington, D.C.....		944
Prepared statement.....		967
O'Brien, John J., Newtown Square, Pa.....		927
Schlenger, Donald S., president, Automotive Parts and Accessories Association, Inc.....		1063
Watkins, Frederick D., president, Aetna Insurance Co., Hartford, Conn.....		931
MAY 7, 1971		
Austin, Hon. Richard H., Michigan Secretary of State.....		1073
Johnson, H. Clay, president, Royal-Globe Insurance Cos.; accompanied by Bill Watson.....		1124
Lemmon, Vestal, president, National Association of Independent Insurers; accompanied by Arthur C. Mertz, vice president and general counsel; and Dr. Patrick Miller, Cornell Aeronautical Laboratory, Buffalo, N.Y.....		1139
Prepared statements:		
Vestal Lemmon.....		1163
Arthur C. Mertz.....		1170
Dr. Patrick Miller.....		1181
Questions of Senator Hart and the answers thereto.....		1187
Markus, Richard M., president, American Trial Lawyers Association; accompanied by Jerry Finn, of New Jersey, chairman, legislative section.....		1083
Copy of the Colorado House Bill No. 1483.....		1086
Roddis, Richard, dean, University of Washington School of Law, Seattle, Wash.....		1103
MAY 10, 1971		
Nader, Ralph, Washington, D.C.....		1245
Letters of:		
April 16, 1971.....		1312
April 20, 1971.....		1922
February 8, 1971.....		1925
December 10, 1970.....		1935
July 9, 1971.....		1936
February 23, 1971.....		1938
Prepared statement.....		1923
Nevin, John J., Ford Motor Co., vice president, Consumer Service Division, The American Road, Dearborn, Mich.....		1211
Prepared statement.....		1365
Supplementary statement.....		1391
Terry, Sydney L., vice president, Safety and Emissions, Chrysler Corp.; accompanied by Victor Tomlinson, legal staff.....		1298
Worden, Mack W., vice president, marketing staff, General Motors Corp.; accompanied by J. R. Doidge, engineering staff; and C. R. Sharp, legal staff.....		1282
MAY 11, 1971		
Bloch, Byron, consultant in biotechnology and product design, Los Angeles, Calif.....		1423
Letter.....		1428

#### IV

Chilcott, Richard G., vice president, family insurance, Nationwide Insurance Cos., Columbus, Ohio; accompanied by Robert W. Griffith, vice president of casualty actuary.....	Page 1433
Prepared statement.....	1447
McEleney, Warren J., president, National Automobile Dealers Association; accompanied by Frank E. McCarthy, executive vice president.....	1455
Pitofsky, Robert, Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.; accompanied by Joseph Martin, Jr., general counsel; and Morton Needelman, assistant to the Bureau Director.....	1399
Taylor, Paul H., president, Taylor Devices Corp., and Tayco Developments, Inc., North Tonawanda, N.Y.; accompanied by Douglas P. Taylor, director, Research, Tayco Developments.....	1407

#### ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

A Trial Lawyer's Legislative Workbook.....	922
A Federal Insurance Approach, article from the Minneapolis Star.....	1801
Advance Payments in Liability Claims, article by Buchheit, Young, and Kurtock.....	1207
Aiken, Hon. George D., U.S. Senator from Vermont, letter of May 8, 1971.....	1905
Allar, Alice M., letter with attachments of June 30, 1971.....	1979
American Association of Retired Persons, National Retired Teachers Association, statement.....	2084
Annual Style Change in the Automobile Industry as an Unfair Method of Competition, article from the Yale Law Journal.....	1318
Arbitration: The Philadelphia Story, article from the Journal of American Insurance.....	536
Bay State's Insurance Industry Hit (article from the Journal of Commerce, Apr. 26, 1971).....	921
Beirne, Joseph A., president, Communications Workers of America, statement.....	2083
Berry, Ross D., telegram of May 11, 1971.....	1955
"Energy-Absorbing Systems Vie for Role Behind Auto Bumpers", article by Nicholas P. Chironis.....	1929
Could Losing Legal Fees Explain Bar's Stand on Auto Insurance?, article from the Louisville Courier Journal.....	620
Ex-Supreme Court Justice Clark Hits No-Fault Insurance Proposal, article from Trial magazine.....	603
Fegraus, Clark E., president, and M. Van Loan, vice president, Automotive Environmental Systems, Inc., San Bernardino, Calif., statement.....	2064
Flanigan, James, counsel, statement of the Independent Garage Owners of America, Inc.....	1820
Friedman, Gilbert, letter of March 25, 1971.....	1708
Furness, Betty, State Consumer Protection Board of the State of New York:	
Telegram.....	404
Letters of April 27, 1971.....	1951
Gee, Thomas G., Graves, Dougherty, Gee, Hearon, Moody & Garwood, letter of February 16, 1967.....	925
Goodsell, Dr. John O., letter of March 31, 1971.....	1710
Griffith, R. W., vice president and actuary, Nationwide Mutual Insurance Co., letter.....	1442
Guiding Principles Relating to Automobile Insurance Claims, article.....	1209
Harriss, Lynn M. F., FASLA, letter of March 12, 1971.....	1949
Hart, Hon. Philip A., U.S. Senator from Michigan, letter of March 26, 1971.....	126
Hartke, Hon. Vance, U.S. Senator from Indiana, letter of June 26, 1969.....	1258
Heyworth, James O., president, Rehabilitation Institute of Chicago, letter of May 24, 1971.....	1956
Houston, Jack W., executive secretary, Georgia Association of Petroleum Retailers, Inc., letter of June 23, 1971.....	1977
Ingram, Denny O., Jr., letter.....	925
Insurance: The Road To Reform, article from the Consumer Reports.....	400
"Insurers and State Regulations Put Detroit on the Carpet", article by John Kolb and Michael Sheldrick.....	1928
International Longshoremen's & Warehousemen's Union, statement.....	2071
Jackson, William C., letter of May 11, 1971.....	1954

Jensen, Everett J., general secretary, Washington State Council of Churches, letter of April 22, 1971.....	Page 1950
Jones, Frank K., president, Citizens Committee for Ethical Insurance, letters of:	
May 28, 1971.....	2027
May 5, 1971.....	2030
March 1, 1970.....	2036
August 30, 1970.....	2037
Keep the Compulsory (article from the Boston Globe, Tuesday, Dec. 6, 1966).....	920
Laurence, A. E., letter of May 10, 1971.....	1921
Leach, Austin F., vice president, Corporate Projects, Omark Industries, letter with attachments of June 8, 1971.....	1982
Leighton, Howard H., president, National Association of Insurance Agents, Inc., letter of March 19, 1971.....	1949
Lorenzi, John de, managing director, Public and Government Relations, American Automobile Association, letter of June 4, 1971.....	1965
Mackoff, Benjamin S., administrative director, Circuit Court of Cook County, Ill., statement.....	2069
Magnuson Hon. Warren G., U.S. Senator from Washington, and chairman of the Senate Committee on Commerce, letters of:	
March 24, 1971.....	50
May 27, 1971.....	98
Maisonpierre, Andre, vice president, American Mutual Insurance Alliance letter of July 22, 1971.....	1902
Marshall, James, counsel, statement.....	2077
McDonald, Ernest, letter of May 5, 1971.....	1952
Michael, Bayard H., letter of April 6, 1971.....	1707
Mingle, Frank A., Motors Insurance Corp., letter.....	1282
Morrissey, William W., vice president, Marketing, Lau Inc., letter of June 14, 1971.....	1974
National Association of Mutual Insurance Companies, statement.....	2081
National Conference of Commissioners on Uniform State Laws, letter of April 13, 1971.....	1804
National Highway Safety Bureau, Federal Highway Administration, U.S. Department of Transportation, Comparative Crash Survivability of Motor Vehicles.....	1258
"National No-Fault" (article from the Boston Globe, Friday, April 30, 1971).....	921
Nielsen, Robert R., letter of May 13, 1971.....	1955
"No-Fault Car Insurance Has Faults," article by Jack Mabley, from Chicago Today, April 15, 1971.....	2074
O'Connell, Prof., Jeff criticizing Ogilvie No-Fault insurance bill, statement.....	2075
Ogilvie, Hon. Richard B., Governor, State of Illinois, letter of May 12, 1971.....	1761
Rafferty, William A., executive vice president, Motor and Equipment Manufacturers Association, letter of May 28, 1971.....	1959
Rogers, Norman L., president, Lawyer Reform of the United States, statement.....	2081
Rue, Charles L., chairman, National Affairs Committee, Independent Mutual Insurance Agents Association of New York, New Jersey, and Connecticut, statement.....	2066
Salter, Leon J., letter.....	1920
Scariano, Anthony, statement on H.R. 7515.....	2072
Schmitt, Allen, president, Kentucky State Bar Association, resolution.....	619
Schneider, Lawrence R., acting chief counsel, National Highway Traffic Safety Administration, Department of Transportation, letter of July 1, 1971.....	1881
Smith, Sherman T., Southern Service Co., letter of April 26, 1971.....	1950
Spaeth, Karl H., letter of May 11, 1971.....	1953
Sternberg, E. R., director, Engineering Planning Truck Group, White Motor Corp., letter of June 11, 1971.....	1967
"The 'No Fault' Insurance Plan" article from the San Francisco Chronicle, dated March 24, 1971.....	1709
Thompson, H. C., president, and John Huemmrich, executive director, National Congress of Petroleum Retailers, statement.....	2064

# VI

Tiebel, Harriet, executive director, American Occupational Therapy Association, Inc., letter of May 28, 1971.....	Page 1957
Toms, Douglas W., Acting Administrator, National Highway Traffic Safety Administration, letter of January 15, 1971.....	1946
Turner, Frank C., U.S. Department of Transportation, letter of November 18, 1969.....	1255
Vindral, George, article from Voice of the People, Chicago Tribune.....	1921
Voelker, William J., president, Illinois Defense Counsel, letter of May 14, 1971.....	1779
Volpe, John A., Secretary of Transportation, letter of June 8, 1971.....	1885
Walsh, C. A., Jr., vice president, Marketing, Atlantic Richfield Co., letter of June 18, 1971.....	1975
Walsh, Richard F., Deputy Director of Policy and Plans Development, letter of June 7, 1971.....	655
Wandschneider, Werner, Stonecrest Furniture House, letter of June 8, 1971.....	1920
Watson, Gilbert L., Consumer Affairs Officer, letters of: March 10, 1971.....	1943
April 23, 1971.....	1922
Wetzel, Robert, president, Riverside Auto Lab Inc., letter of May 28, 1971.....	1963
Wire Taps (article from the Boston Sunday Globe, April 25, 1971).....	922
Zal, Frank, arbitration commissioner, report.....	504

## AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

THURSDAY, MAY 6, 1971

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 11 a.m., pursuant to recess, in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the Committee) presiding.

Present: Senators Magnuson and Hart.

The CHAIRMAN. The committee will resume its hearings on the insurance bills. Robert Joost is the next witness.

We will be glad to hear from you. I understand that you are employed by the American Trial Lawyers Association, is that correct?

### STATEMENT OF ROBERT H. JOOST

Mr. Joost. I am from the American Trial Lawyers.

My name is Robert H. Joost. I am a lawyer, and I am employed by the American Trial Lawyers Association at its headquarters in Cambridge, Mass.

I am submitting this statement for the record in favor of pending legislation in the Congress to establish on a nationwide basis a system of compensation of victims of automobile accident regardless of fault.

Since the American Trial Lawyers Association opposes no-fault automobile insurance legislation, I am submitting this statement for myself only and not for the association.

The CHAIRMAN. Can I interrupt just a minute. Do we have a formal statement in opposition from the Trial Lawyers Association?

Senator HART. They testified yesterday in very strong opposition.

Mr. Joost. First to establish my own professional credentials, I am a graduate, magna cum laude, of the Harvard Law School, where I was an editor of volumes 72 and 73 of the Harvard Law Review, and I am a graduate, magna cum laude, of Yale College, where I was a member of Phi Beta Kappa. I have also studied at Columbia University as a graduate student in economics.

In addition to my professional work from 1962 to the present for the American Trial Lawyers Association—until 1964 it was called the NACCA Bar Association—I have been heavily involved in two major statutory reform efforts in Massachusetts. I participated in the molding and remodeling of the new Massachusetts mental health code, which goes into effect July 1, as a member of the legal studies staff of the Massachusetts Special Commission on Mental Health and as a member of the Attorney General's Committee on Commitment Law Revision, and since 1968 I have been a reporter for the Criminal Law Revision

Staff member assigned to these hearings: S. Lynn Sutcliffe.

Commission of Massachusetts which is engaged in revision of the substantive criminal law of the State.

Also, from 1967 to 1971 I was a part-time law professor at the New England School of Law in Boston. I have published articles and comments on a variety of legal subjects, the most recent being a piece called "Housing and the Law: An Overview," published in 6 New England Law Review 1 (1970).

I am a member of the Massachusetts bar, and a member of the American, Massachusetts, and Boston Bar Associations, the American Trial Lawyers Association, and the American Judicature Society.

My present post with the American Trial Lawyers Association is assistant to the chairman of the legislative section, which I have held since 1968. For a period I was called special counsel but the title was changed to assistant to the chairman in 1969.

I am also consulting editor of Trial magazine, the bimonthly national legal news magazine published by ATL. As a matter of fact, I am the only lawyer on the editorial staff of this magazine. Copies of letterhead stationery which indicate my position are attached to my formal statement.

I was first employed by the trial lawyers in 1962, as assistant to the editor of the NACCA Law Journal, which is now called the Journal of the American Trial Lawyers. In that capacity, between 1962 and 1964, I wrote a substantial percentage of the articles published in volumes 29, 30, and 31 of the journal. From 1964 to 1967, I worked for the association on a part-time basis as the paid author of a regular column in Trial magazine entitled "A Brief Sweep" in which I synopsized current law-review articles of interest. I accepted a full-time position as an editor of Trial in September of 1967.

In addition to almost a decade with the trial lawyers association itself, I also practiced law for 2 years with a law firm in Boston that concentrates on automobile negligence work—Sheff & McGarry; one of the partners was then a member of the board of governors of the American trial lawyers. The firm is typical of many such law firms across the Nation.

As an ATL staff member, I have attended numerous national meetings of the trial lawyers—two in Denver, one here in Washington, D.C., one in Las Vegas, one in San Francisco, and one in the Bahamas. In 1970, I arranged and attended regional meetings of Key Men—that is, members interested in influencing legislative action—in Cambridge, Las Vegas, Atlanta, Chicago, and Denver.

In 1971 to date, I have been to two such Key Men meetings; the 1971 meetings were devoted exclusively to how to defeat no-fault—completely—at both State and Federal levels.

This statement is thus based on long personal involvement with and observation of the principal opponents of legislation aimed at compensating automobile accident victims regardless of fault—the trial lawyers.

I am submitting this statement in support of the Hart-Magnuson bill as an act of conscience, as an attorney, and as a citizen. It is also submitted with sadness for I had hoped that the association itself would see and would accept the fact that we lawyers must put aside our personal pocketbook interest where the public interest conflicts.

Unfortunately, the group in control of ATL has refused to concede that there is such a conflict and has refused to accept that a profes-

sional association of attorneys has a higher obligation than maintenance of personal income.

As a matter of fact, the group in control has never even polled the membership on no-fault versus negligence because no-fault is viewed as putting them out of business.

I myself have been in favor of no-fault automobile insurance, at least in part, for some time, I reviewed the trailblazing book by Profs. Robert E. Keeton and Jeffrey O'Connell, "Basic Protection for the Traffic Victim," in the spring 1966 issue of the *Portia Law Journal*, at pages 266 to 267. In that review, I called the book a "pathfinder in a difficult area," and as to the no-fault plan advocated by the authors, I concluded:

The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

A copy of that review is attached to my statement.

I attach also a copy of a letter to the editor of the *Boston Globe* published December 6, 1966, in which I criticized then Gov. John A. Volpe for his opposition at the time to the no-fault concept. In this letter, I declared in conclusion:

The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried.

I am pleased personally that in 1970 Massachusetts, under the leadership of Michael Dukakis, a Democrat, and Francis Sargent, a Republican, did seriously consider and enact into law a no-fault automobile insurance law. As both Governor Sargent and Mr. Dukakis have testified to a subcommittee of the House of Representatives, the results in Massachusetts, so far, exceed the most sanguine expectations of the proponents.

I attach a letter by Mr. Dukakis published in the *Boston Globe* of April 30, 1971, in which he calls for extending these benefits to all the people through a national no-fault system.

When I was hired by the American trial lawyers on a full-time basis in 1967, I had to agree to make no public statements in opposition to the position of the association. My personal views, however, did not change.

The CHAIRMAN. Mr. Joost, do the American trial lawyers have their national headquarters here in town?

Mr. Joost. No, in Cambridge, Mass. We have a Washington representative, but the headquarters are in Cambridge across the Cambridge common from the Harvard Law School.

To reiterate, my personal views did not change. As a matter of fact, my enthusiasm for the no-fault approach to automobile reparations increased. While my original decision to favor the Keeton-O'Connell plan might have stemmed, at least in part, from the fact that I studied torts from its principal author, Professor Keeton, and because Mr. Keeton was instrumental in getting me my first job with NACCA in 1962, my editorial position with *Trial* starting in September 1967 gave me the time and the access to books and reports which were necessary to a true appreciation of all the issues involved.

Let me state formally for the record: In my judgment, based on my years of study, thought, and observation, I believe that a system of automobile reparations based on compensation of all the tangible losses

of all victims of automobile accidents in the United States without regard to fault would be a much better system than the present one based on compensation of all the tangible and intangible losses of victims but only if the victim proves that a financially solvent defendant by his negligence proximately caused his injuries and only if he proves fault and damages by a preponderance of the evidence in a trial before a court or jury.

Under no-fault, the public, the beneficiaries, and consumers of automobile insurance would get better protection for the premium dollars spent and at lower annual cost.

In addition, the hard-pressed judicial systems of the Federal and State governments would get some relief. The problems of the courts of America today are largely on the criminal docket rather than the civil docket side, but it is my judgment that no-fault, by lifting out of the courts a substantial volume of cases, would free up enough judge time, enough judicial man-hours to make it possible to try every criminal defendant in this country within 60 days from date of arrest, or at least within 6 months. It is by no means the complete answer to the crisis of our courts, but it is a part of the solution, and a part, incidentally, that does not require the expenditure of additional taxpayer money.

Finally, no-fault is a much more efficient system than the present one. The present one was not developed for a nation with 100 million registered motor vehicles and a multibillion dollar insurance industry; it was developed for a horse and carriage society, in another country, in another century, in the pre-liability-insurance era.

Since 1932 and the Columbia University study, it has been apparent to anyone who has studied the literature closely that something better than the automobile negligence liability-insurance system was available. The success of the Saskatchewan plan in one of the provinces of Canada confirmed this point.

However, for almost 40 years, the people of the United States were denied this "something better" because the individuals who feed off and earn their livelihood from the automobile negligence system happen also to possess a great deal of political clout.

They had, in fact, enough political muscle to snuff out the idea before it could even be tried in any State of the Union until the Commonwealth of Massachusetts in 1970 enacted a no-fault law. The Massachusetts statutes, however, came about as a result of rather unique circumstances which are unlikely to be duplicated in many other States: A very strong proponent in each political party; the highest premium rates in the Nation; a weak statewide organization of trial lawyers; and a State legislative tradition of being innovative.

Since there has never been any question as to my personal preference for no-fault, I confess that I did speak, my true feelings with some discreet friends. About a month ago, I received a telephone call from a congressional aide. He asked if I would testify before Congress on no-fault legislation. Apparently, one of my "discreet" friends hadn't been so discreet, and the congressional aide had learned that there was a lawyer who worked for the American Trial Lawyers Association, a trial lawyers' lawyer, who didn't agree with the party line.

I told him no because I wasn't myself convinced that automobile insurance was a proper subject for Federal rather than State legislation. I told him that I leaned toward the view that the States should be given every opportunity to act before the Federal Government comes in, in whole or in part.

Since that surprise telephone call, I have agonized and pondered.

Finally, after a recent meeting of key men in Chicago, I concluded that I had to testify. If Congress is to execute its duty, which is to all the people of the United States and not just to the trial lawyers, it should get the views of one who has studied and thought hard about this no-fault business for many years, and who has been a trial lawyers' lawyer.

In my judgment, the only way in which this Nation is going to get real justice, opportunity and environmental health is if the Congress and the State legislatures authorize the private and independent trial lawyers of America to become "private attorneys general" on behalf of private citizens and to authorize the trial lawyers to bring private-remedy actions for injunctions, court orders to perform, and damages against those who pollute, against those who discriminate, against those who rent substandard housing and against those who take advantage of consumers—in return for a reasonable attorney's fee and true costs, fixed by the court and paid by the defendant found by the courts to be in violation.

The fact is, therefore, that the enactment of the Hart-Magnuson legislation will not wipe out the trial bar for there are so many wrongs that need to be litigated and righted in our courts of justice. But the courts today are so chock-a-block full of existing business that they can't really take on big new workloads, even if class actions, treble-damage suits and all the rest were authorized in all the areas in which adequate enforcement of existing law is important.

The fact is, Mr. Chairman, that the trial lawyers of America, who should be out there litigating for America, a better America, are vegetating in the pork barrel of automobile negligence work.

The fact is that the only thing that will get the private and independent litigation experts en masse into environmental litigation, consumer protection litigation, inadequate housing litigation, antisnooping litigation and all the other things that lawyers can do in court which this country needs to have done is for the Congress of the United States to push them out of their present overstuffed and overpaid womb.

As I mentioned, until recently I leaned toward the position that, I now believe firmly that a decision to leave it to the States is, in fact, a State level before the Federal Government acts. I no longer do. I now believe firmly that a decision to leave it to the States is, in fact, a decision to retain the automobile negligence system with all its waste, all its excessive administrative costs, all its duplication, all its slow pace of operation.

If the Congress declines to act now, there will be some automobile insurance legislation passed by a few States in addition to my own. The legislation will even be called no-fault. But the terminology will be designed for one reason, to keep the Congress out. In reality, these State laws will continue the waste and the inefficiency of the present negligence liability-insurance system while ameliorating some of its bad effects.

Moreover, they will add the new problem which Gov. Francis Sargent of Massachusetts pointed to in a recent speech—the problem of excessive profits by the insurance industry. I have attached to this statement an article summarizing a recent speech on this subject by the Governor.

In Chicago on April 24th, I heard the ATL key men from Ohio and Illinois make such smug associations of control of their State legislatures, in whole or in part, that I was absolutely and totally disabused of my States-first leaning. I heard also that the trial lawyers have been increasing their power and their strength in State legislatures.

For example, the Texas Trial Lawyers Association has been running a program they call LIFT, under which subscribers contribute a minimum of \$10 a month to what amounts to a campaign fund for candidates for the legislature. More than 600 Texas trial lawyers now subscribe, according to what I learned at the Chicago meeting.

Every election year, the funds accumulated by LIFT are divided among protrial lawyer candidates for the Texas Legislature. Let me read the text of an item that was published in the June 23, 1970, issue of the El Paso, Texas Trial Lawyers Association newsletter, "Ready for the Plaintiff." (Vol. VI, No. 3) (The editor of the newsletter is attorney Richard T. Marshall, who was then national secretary of the American Trial Lawyers Association.)

#### UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT* was responsible for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing \$10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas, for statutory authority to let jurors know what they are doing in *special issue* verdicts, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to survive, better get with it.

Send a check, any amount, to LIFT, 201 Westgate Building, Austin!

A more complete description of LIFT, published in an ATL 1970 publication called "A Trial Lawyer's Legislative Workbook" and taken from a letter dated January 7, 1970, by Attorney William R. Edwards of Corpus Christi, Tex., to the vice chairman of ATL's legislative section with a copy to me as assistant to the chairman of the legislative section is attached to this statement.

It may be of interest to this committee to know that the Texas Trial Lawyers Association, which promotes LIFT as its "latest effort . . . a legislative kitty which is paying off" is itself a tax-exempt organization. I attach also from the Trial Lawyer's Workbook a copy of letters the Texas affiliate received from tax attorneys supporting their exempt status and advising them how to keep it.

What this means, of course, is that in at least one State the Federal Government, by tax preference, is subsidizing political opposition to the Keeton-O'Connell plan and other no-fault proposals, at the same time that Federal Government officials argue that the States can and will pass good no-fault laws.

Mr. Chairman, how many State senators or State representatives in Texas are going to vote for meaningful automobile insurance reform,

when they know that if they do attract candidates, good speakers, with money from LIFT and campaign help from the trial lawyers are going to run against them in the next primary or the next general election?

What real chance do the people of Texas have to receive the benefits of the no-fault system of automobile reparations—unless this Congress passes Federal no-fault legislation?

At the Key Men meeting on April 24, I heard that the LIFT program has been adopted by at least one additional State. According to Attorney Thomas A. Heffernan of Cleveland, Ohio—I believe his law partner, Mr. Craig Spangenberg, addressed this committee the other day—the Ohio Academy of Trial Lawyers is now enrolling subscribers to its version which bears the acronym ADOPT. This attorney predicted flatly, unequivocally, and totally that the Ohio Legislature will never enact any no-fault automobile insurance legislation in any form.

At that meeting, the chairman of ATL's legislative section, Attorney Jerry Finn of Newark, N.J., summed up the discussion by saying: "Let's all ADOPT LIFT." No one objected.

More direct fundraising methods are also used by trial-lawyer groups. According to Attorney Jon Carlson of Belleville, Ill., who spoke at the meeting, every member of the St. Clair, County, Ill., Bar Association has been assessed \$100 for a fund to fight Governor Ogilvie's insurance reform legislation.

Incidentally, Mr. Carlson and Attorney Leonard Ring of Chicago both asserted at this meeting that Ogilvie's bill doesn't have "a chance" to become law in Illinois. In Mr. Ring's words: "We control the Senate, Ogilvie controls the House; it's a standoff."

Mr. Chairman, again, what chance do the consumers of automobile insurance in Illinois have to secure the benefits of no-fault unless the Congress acts?

At another "key men" meeting, this one held for representatives from the northeast region, on April 17, in the offices of the American Trial Lawyers Association in Cambridge, Mass., several of the representatives suggested that defense lawyers, that is, personal injury lawyers who are retained by insurance companies to defend against automobile negligence claims, are a good source for funds to finance the fight against no-fault.

The key men were urged to form general anti-no-fault lawyers' groups and citizens' groups and resign themselves to the fact that defense lawyers were afraid to let their names be used since many of them are retained by insurance companies which are in favor of no-fault auto insurance. I believe it was Attorney Daniel H. Mahoney of Albany, N.Y., who mentioned that such a citizen's committee was functioning in New York State and had purchased newspaper advertising in several papers against the Gordon bill in the New York State Legislature (the Gordon bill is patterned after the Massachusetts law).

It was stated that the advertisements should become punchier. I notice the recent ones just say no-fault is a hoax.

Another Key Man, and a former Connecticut State legislator, Attorney Leon Riscassi of Hartford, mentioned that the Connecticut trial lawyers had also had good luck in raising funds from the sheriffs and constables of the State of Connecticut. Apparently, the deputies

are paid on a fee basis; they were convinced that no-fault would mean fewer legal papers to serve and, therefore, lower incomes for themselves.

The committee may also be interested in another method that has been used for more than 3 years to fight no-fault. Since late in 1967, the association has been arranging for large fees to be paid by one or another trial lawyer group to a supposedly neutral academic, Prof. David Sargent of Suffolk University Law School in Boston, in return for his speaking, appearing, and testifying before private and legislative groups all around the country.

I see no objection to the appearances or to his being paid—Dave Sargent is a very able law professor; he has a viewpoint, and the subject matter demands the most careful and complete discussion—but I do find it less than honorable that Professor Sargent appears wearing his Suffolk University hat rather than his trial lawyers mantle, and that his audiences are not told who is paying him or how much.

As a matter of fact, at one of the recent Key Men meetings, somebody was complaining that Professor Sargent's rates were going up. The delegates said that he is now asking \$500 an appearance plus expenses—for 1 day.

As the committee may know, this morning in Boston the supreme judicial court of Massachusetts heard oral argument in a suit challenging the constitutionality of the Massachusetts no-fault statute. The action has been brought by the immediate past president of the Massachusetts chapter of the American Trial Lawyers, Attorney Robert Cohen.

There was a short news item in the Boston Sunday Globe for April 25, 1971, page A-5, on one of the methods used to finance this constitutional-challenge litigation. According to the Globe's account:

Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at \$50 per set the two-volume brief (\$45) they have prepared on the case and the appendices (\$5) . . . Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief . . . and (2) the appendix consists of court records, which may not be theirs to sell.

To summarize and reiterate, it is my considered judgment that the trial lawyers will probably prevent any meaningful no-fault legislation from being enacted in any of the State legislatures, with a few possible exceptions. It is naive to argue that there is a choice between Federal legislation and legislation in the other 49 State capitals. The only choice is between Federal no-fault legislation or maintenance of the present negligence system, the system which the Department of Transportation's \$2 million study so carefully and painstakingly criticized.

There is, I might add, a second reason why I believe Congress must act. If the trial lawyers have a stronghold on the State legislatures, how does one find words to describe the power position of the insurance industry and its armies of lobbyists in all statehouses? There is at this time in my opinion absolutely no justification in experience or policy for the present exemption of the insurance industry from meaningful Federal regulation.

According to Attorney Heffernan of Cleveland, again, the trial lawyers have one lobbyist in the Ohio Legislature and the insurance

companies between them have 30. If the ATL people can make the assertions they make with their one lobbyist and ADOPT/LIFT, think what assertions the insurance companies can make in their private conclaves.

The objective of the insurance industry, according to the best information and intelligence the trial lawyers have been able to acquire, is maximum profit. Rest assured, there are enormous profit possibilities in no-fault automobile insurance unless it is tightly audited and regulated.

The reason for this is that a no-fault policy basically is a combined medical, accident-and-health and income-replacement policy which pays benefits in case of motor vehicle caused injury.

But the rates in Massachusetts, after the no-fault statute was passed, were not set on the basis of experience with accident and health and income replacement coverage, but rather on the basis of reductions from current automobile personal injury liability insurance rates. It is going to take a considerable number of reductions before one gets down to the accident and health premium level, and in the interim, rather enormous profit potential is available to the industry.

S. 945, the Uniform Motor Vehicle Insurance Act, represents new coverage by a new system. Since there are not now any Federal personal injury liability insurance rates, rates won't be set—they couldn't be set—by reductions from existing Federal rates. They will have to be set afresh from the new perspective, and that is what is appropriate when the subject is a new and different kind of coverage.

In my opinion, only the Federal Government has the strength and the capability to tightly audit and regulate no-fault automobile insurance coverage. If profits in excess of a reasonable return are to be prevented, no-fault must be legislated by the Federal Congress. Any other course would just mean the substitution of one form of consumer abuse with another.

I urge the passage of the Hart-Magnuson legislation.

Now, while this concludes my prepared statement, I would like to add a summary of what has happened since I mailed this statement to the Congress.

I was informed on Monday, April 26, after I mailed my statement to Washington, of the decisions reached at another trial lawyers' meeting in Chicago on April 24. At that meeting, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department—the department of Federal-State relations—with a proposed budget of \$322,200 for the fiscal year which begins August 1.

The executive committee voted to finance the budget for this new department by (1) reducing the budget of the department of public affairs and education (which edits and publishes *Trial*) by \$112,000, and by (2) dues increases expected to net an additional \$200,000.

As part of the cutback in the public affairs and education department, its director was ordered to dismiss me, the only lawyer, at the end of the fiscal year, as well as several additional staff members.

In view of the statement I had mailed to Washington, I told the department head, the editor of *Trial*, that I would leave after the 2-week notice period which means I cease to be an employee tomorrow, May 7.

The director of the new department of Federal and State relations—a department incidentally which goes from nonexistence to being the largest department, consuming 25 percent of the association's total budget—the director will be Mr. Alan Locke. Mr. Locke is not a lawyer, but his brother, Barry Locke, is an aide to Secretary Volpe.

As part of that one-third-of-a-million-dollar budget, the association has contracted with a professional public relations firm to fight “no-fault”—the firm of Edelman & Co. of Chicago.

Thank you.

The CHAIRMAN. Thank you for your very potent statement.

I am going to have to leave in a minute, but I just want to point out that I, like yourself, in the beginning was hesitant about proceeding on the Federal level, thinking we could encourage States to get at this matter. I mentioned that sometime ago—3 or 4 years ago. But I have found from practical experience that it just doesn't seem to be moving.

Now inaction may result from some of the things you are talking about—I suppose they are factors—but even in my own State, and I am quite close to the legislature there, having served in it at one time, I find a lot of opposition to the concept of no-fault by legislators who I guess have never sought out to lawyers or insurance companies or anybody else. But when no-fault is proposed to them, then they will ask someone like an insurance man that they know of or a trial lawyer who just about convince them that no-fault isn't a good system. And there is no rebuttal. There is no chance for the premium payer or the consumer of automobile insurance to get their word in.

The result is there is just no action. I can conceive that, if we did something here that would allow the States to try and do something in a reasonable time, it would just not happen. We have run into that in all kinds of safety legislation. We tried to compel the States to have auto safety laws and it didn't happen until we passed a Federal bill. Sometimes, when we begin hearings on Federal legislation, it wakes some people up and they start to get busy. But when you are talking about 50 States, that isn't true; it is going to be a long, long time.

So, I am appreciative of your testimony, and being a lawyer myself I understand how they operate sometimes, although I am a little rusty at the practice of law now.

This is a very potent testimony because I think there are two things that plague every home in the United States. There are a lot of other things, but these are two things we know plague every home, financially, emotionally, and every other way. One is health insurance and the other is auto insurance. They affect every home, not only because of the money involved but because of the kinds of things that happen. When insurance companies are canceling contracts, when rates go up for insurance, people are afraid to go to the hospital or make an auto claim. They don't know if they can afford to take such action. And this is true in every home. I have said many times in the past 3 or 4 years that auto insurance and health insurance are two things that Congress ought to set itself to.

I am so glad that there is so much interest in this no-fault bill of Senator Hart's and myself, and we are hopeful to move along. And your testimony here is quite potent, and I appreciate it.

Now you will have to excuse me. I have to go down and discuss some maritime matters.

Senator HART (presiding). Mr. Joost, I think "potent" is an excellent word to describe your testimony, and I would think that it would move this legislation along.

Mr. Joost. I hope so.

Senator HART. It should. We will see if it will.

Now, I made so many notes as you went along that I don't know where to begin, but there are several points that I would like either to have you clarify or by a question, underscore.

Mr. Joost. Certainly.

Senator HART. Before I get to that, let me comment. On the very first page you describe your professional qualifications. I have met a magna cum laude man from Harvard law, and I have known Harvard Law Review editors. I am not sure if I ever met a magna cum laude graduate from Yale. I have met Phi Beta Kappas. But this is the first time I have met all of them at once. Do you understand my reluctance to ask you questions?

Frankly, I was tempted on other days in these hearings we have had witnesses speak against the bill to suggest the high level of self-interest which inevitably would operate on their judgment. I didn't. You are pretty blunt about it. I guess the reason I didn't is my belief—my hope—that in the legislative considerations of these proposals, intelligent men will be able to evaluate the background from which on any of these witnesses speak. It was not that I was unconscious.

Mr. Joost. I hope your claim has merit.

Senator HART. Here is one I will have to ask you to clarify. We opened these hearings with Secretary Volpe as the witness, and I haven't reread the testimony—maybe my memory is faulty—I thought he was one of the great fighters for the Massachusetts no-fault plan. I get the impression that he knows the fight: you can wait for the States and give them a try. Your vision of his role is sharply different from my impression.

Is my impression wrong?

Mr. Joost. Your impression is wrong, sir.

As you know, Massachusetts has had a compulsory-automobile-liability-insurance law since 1927. There have been problems under this law, including the fact that it helped to put Massachusetts in the untenable position of being the State with the highest auto-insurance premiums in the country. In 1966 or 1967, shortly after John Volpe's election to the first 4-year term as Governor of Massachusetts, shortly after that election, the Governor filed legislation to end the compulsory-liability-insurance system and enact a financial-responsibility law and also to establish a fraudulent-claims bureau.

Now, financial-responsibility laws exist in 47 of the 50 States. Only three States, Massachusetts, New York and North Carolina, have compulsory automobile-insurance laws. Financial-responsibility laws are a little like the dog-bite laws; you may get the "first bite" free, but after that you have to have liability insurance.

Governor Volpe pushed for "financial responsibility," even though it has never really worked, because "financial responsibility" means there will always be some totally uncompensated victims. If you get hit by an automobile, and if the person who hits you doesn't have liability insurance or private wealth or substantial property subject

to attachment, "financial responsibility" means you are totally without protection in case of injury.

I have heard of cases in States with financial-responsibility laws where hospitals wouldn't even admit an automobile accident victim until they received proof that either he had a Blue Cross certificate or that the person who hit him was insured or highly solvent.

Despite all this, Governor Volpe introduced a financial-responsibility bill. Mike Dukakis, who was a classmate of mine at Harvard Law School and a very active Democratic Member of the House of Representatives, decided that the Democrats had to come up with an insurance program also. He decided that it should be a real reform program, and thus he filed the "no-fault" legislation that had been drawn by Professor Keeton at Harvard.

Governor Volpe did not support him. Mike got it through the House of Representatives on a hot summer day when there weren't too many people there; he moved substitution on the floor, and the Keeton-O'Connell plan passed. Lo and behold, the trial lawyers panicked. There was an emergency return of employees on vacation. All kinds of things happened. People scurried all over the place.

Finally, there was a day of great jubilation when somebody persuaded the head of the Teamsters Union in Massachusetts, I think his name was Nick Morrissey, to agree to run full-page ads by the Teamsters opposing no-fault, provided the trial lawyers would pay for them all. With this kind of support, "no fault" was killed in the State senate.

Governor Volpe never made a statement in support of "no fault." He never had to act, of course, since the bill was prevented from coming to his desk as Governor. The same thing happened again in 1968. Governor Volpe never endorsed the concept while he was Governor.

Senator HART. My question might appear to be critical of the Secretary. I was asking for clarification. I react this way. Sort of the Biblical welcome-home thing. If in fact once he was opposed or not helpful, he now has moved to the point of urging the adoption of no-fault across the country, but says—and I sense rather reluctantly—that we ought to wait, you know, pass a resolution and encourage the States to do it. In any event he does, you will be glad to know, support no-fault.

Mr. Joost. I think one reason for his support now is the fact that his Lieutenant Governor, now Governor, Francis Sargent, has found that the "no-fault" thing works. You know, there is nothing like trying something—try it and see if it works. The Massachusetts law is really not a very good law technically. I have drafted a lot of statutes for the criminal law commission, and believe me, the Massachusetts no-fault law is technically very poor.

The first sentence is 567 words long. The second sentence is 140 words. The guts of the statute are contained in a definitions section; the definition of PIP, personal injury protection. With all, it is a weak and limited bill, but the important thing is that it is working. The premium rates are coming down, although they have got to come down much more.

Senator HART. Governor Sargent filed a statement with us yesterday complaining about the failure of the Massachusetts plan to reflect the savings that were accruing to the insurance carriers.

I won't ask you to describe in fuller detail how your vacation was interrupted, but I am intrigued by the passing comment that you made about it.

Do you know whether the Internal Revenue Service has reviewed any of these programs or war chests, or whatever you want to call them, specifically the one in Texas?

Mr. Joost. I just don't know. The letter from tax counsel which I attach to this statement states the facts—in other words, you have told us thus and so. The LIFT program is not in that statement of facts. So I can't blame tax counsel. I have no way of knowing what Internal Revenue has or has not done.

Senator HART. Some place in here you describe a county bar association assessing a sum.

Mr. Joost. \$100.

Senator HART. That was on each member to generate moneys to fight the Ogilvie plan in Illinois County? Could they fog that up in such a fashion as to make it a deductible business expense?

Mr. Joost. Again, I am not a tax lawyer, and I think I had better stay out of that can of worms.

Senator HART. The group which files and obtains a tax exempt status nonetheless may not use moneys in legislative lobbying unless it wants to forfeit its exemption. I am not a tax lawyer either, but isn't that a correct statement?

Mr. Joost. That is correct. I think the reasons for it are terribly important public-policy reasons. We cannot permit special-interest groups, particularly special-interest economic groups, to be both tax exempt and free to lobby. When you come right down to it the bar associations, at least the American Trial Lawyers Association, is nothing more, nothing less than a trade association. If groups like this are subsidized by the Federal Government to pursue lobbying and legislative activities aimed, not at the best interest of the Federal Government or the best interest of the people, but at their own personal best interest, their own personal pocketbook interest, then the public is deceived.

The trial lawyers speak in terms of "offensive" legislative activity, which means persuading States to enact new provisions such as comparative negligence as a replacement to the rule of contributory negligence, and "defensive" legislative activity, which means preventing the passage of "things we can't live with"—preeminently no-fault auto insurance.

I think the reasons why Congress continually has said, in all its revision of the Federal Tax Code, that you can't be both tax exempt and lobby, are good. There are particular situations, I know, where the prohibition hurts, but I think the reasons in favor are overwhelming and clear. Personally, I think that the tax law on exemptions for trade associations and such groups should be tightened.

Senator HART. The fact that you have advised us with respect to the activities which you, as a result of sitting with the "Key Men" meetings, know are included in the agenda of these groups would, I think, put the Internal Revenue Service on notice. I am not suggesting that it is or isn't an abuse, I don't know. But certainly you have raised the question. As you say, it is a basic public policy concern that that kind of activity not be subsidized.

Incidentally, you describe the political muscle of the trial lawyers' groups in the States. With the little experience I had at Lansing, which is the State Capitol of Michigan, I would think that opposition to no-fault in consequence is getting more political muscle when they enlist the sheriffs and constables as alluded to in your testimony. As for this business of the professor at Suffolk testifying, speaking, and drawing fees from the association; this practice probably will be with us as long as we have this kind of society, I suppose. I don't know how you can get a hand-hold on that. The politicians should be most conscious of the glasshouses in which they dwell before criticizing someone else. We do it in reverse, or some do. Some lecture to groups and they are then compensated. I am always struck by the fact that the group to which the politician is lecturing knows infinitely more about the subject matter than the politician, but the group pays him.

Mr. Joost. That is not always true. The thing that disturbs me personally about the university situation is that the scholar, the teacher, does hold himself out to his students, if to no one else, as a certain sort of person. We have been having a certain amount of trouble in our universities because not all students believe all faculty members are in that position. But I would like to believe, myself, that those who choose to work in academia, who choose to become professors, will in fact pursue the truth in the old Socratic manner.

All the law schools say they have the Socratic method of teaching. The goal of Socrates' method at least as I recall it from my limited memory of philosophy courses, was the pursuit of truth. I don't think you can pursue truth and at the same time accept stipends, which you do not disclose, from groups who frankly do not care about the argument so long as they get the desired results.

Senator HART. Perhaps disclosure for academics is what we should recommend just as we recommend disclosure for the political lecturer.

Mr. Joost. I think you find academics recommend disclosure for politicians much more than they recommend it for themselves.

Senator HART. Drawing on your background, in the course of our hearings, questions have been raised about the basic constitutionality of the Hart-Magnuson proposal and more acutely about State no-fault legislation.

Now, first, on the question of the Massachusetts no-fault law, what is your opinion with respect to its constitutionality?

Mr. Joost. Well, obviously, I cannot outguess the Supreme Judicial Court of Massachusetts, but my feeling is it may in fact—a key part of it may in fact—be held unconstitutional on the grounds that it is an arbitrary, capricious classification.

Now, the Massachusetts law works on what may be called the threshold concept. If you have \$500 of medical and hospital bills, and they are reasonable, then you can get a tort lawyer, go to court, get a jury trial, and you are entitled to and can recover a verdict that includes general damages for intangible losses—pain, suffering, inconvenience, emotional hurt, and all the rest.

But, if your medical bills are less than \$500—there is a whole list of things, prosthetic devices, ambulance charges, and so forth that are includible—if they are less than \$500 you cannot get general damages; you cannot recover for pain and suffering; you cannot get a jury trial.

The Supreme Court of the United States in a line of cases—I don't have the citations here—has spoken of the necessity for reasonable classifications, reasonable categories which bear some logical relationship to the subject matter. Now, I think it is possible that the SJC of Massachusetts will conclude that this \$500 business is an unreasonable classification. It has no relation to what kind of an automobile accident it is or what the injuries are, it has no relation to any of the findings of the DOT studies; nobody says that \$500 is the magic cutoff between serious and trivial accidents. I don't know where the threshold cutoff came from in the legislative hurly-burly on this law but it came and the number picked was \$500.

I think it is quite possible that this could be called arbitrary. If it is arbitrary and capricious, the provision could be wiped out as unconstitutional. I would like to contrast this \$500 clause with the related provision in your own bill, Senator Hart. In section 4, your bill says that you can recover general damages in a tort suit if there is a "catastrophic harm," as defined. Now catastrophic harm strikes me as being a very reasonable category. We can distinguish rationally between catastrophic harm, which is defined, and all the rest, which is noncatastrophic harm. That is reasonable classification. I think it fits what was meant by the great justices who have declared that due process means a "scheme of ordered liberty," "the American scheme of justice." Due process requires reasonable classifications, not cutoffs plucked out of thin air. Otherwise, there is a denial of equal protection. Catastrophic harm is a very good dividing point, and certainly it is within the legislative province to define it.

As to the Hart-Magnuson bill itself, I see no constitutional problems. If anything is clear from the original documents on the founding of this Republic, the one power that everyone agreed should go to the Federal Government was the power to regulate interstate commerce. I think that automobiles today—automobile driving today—is the single biggest kind of interstate commerce we have.

Now, the members of the Constitutional Convention of 1789 didn't say everything that was interstate had to be regulated by Congress. But I think it was their understanding that the important things should be centrally regulated if this was to be a viable Federal Union. I believe that automobile driving is so interstate today that all its aspects—the manufacture in terms of safety and environmental controls, the compensation of the people injured, the insurance against losses caused—all belong under Federal regulation. It is preeminently, not marginally, interstate commerce.

The Federal Government regulates many things. There are also a lot of Federal criminal statutes that use the interstate commerce power as a threshold, a kickoff to establish Federal jurisdiction. Automobile operation involves much more interstate commerce than many of these things now governed by Federal law.

There is a real practical necessity for uniform automobile compensation law. If there were 50 different State laws on auto insurance, there would be tremendous confusion. I think the insurance companies would find that even their computers would get tired figuring exactly how the system works in each State and what the applicable law is.

So it is clearly interstate commerce. The subject is clearly within the competence of the Congress. It is clear under the necessary and

proper clause that when the Congress enters an area which is within its constitutional authority, it may legislate as its wisdom and discretion dictate.

The argument has been raised that the Hart-Magnuson bill violates the seventh amendment with respect to jury trial. I do not believe that argument has merit. The Supreme Court, over the years, has rather carefully, and I think rather deliberately, refrained from including the seventh amendment right to civil jury in any of the dicta discussing or defining what is meant by due process.

Senator HART. I have not heard it developed really to the end of a paragraph, but I sense some concern, perhaps among some Members of the Congress, that goes this way: Can we legislate, wipe out what they would describe as everybody's right to proceed in a tort case to establish and recover for any hurt? It isn't voiced quite that way, but I think that it is out of that question that comes their wonder about the reach of a bill such as this. In other words, I guess they would say what you are doing is by a Federal act washing out an individual's States rights to use a State court system to recover for whatever he can establish was wrongfully caused.

Mr. Joost. There are precedents for this. I have taught at the New England School of Law; I taught labor law. I think labor law is a prime example of an area in which the States and the State courts had major authority. The States defined and enforced the rights of management and of labor, of owners and of strikes. But then came Federal acts—the Norris-LaGuardia Act and the Wagner Act in the 1930's, as amended by the Taft-Hartley Act, as amended by the Landrum-Griffin Act—and no longer was a factory owner able to use his State court system to enforce "yellow dog" contracts or convict strikers or enjoin union activity.

Prior to the 1930's, the Federal Government had no great involvement in labor matters. But the U.S. Supreme Court upheld the National Labor Relations Act in the 1930's, when its constitutionality was challenged on the ground that Congress could not take these powers from the States. The Court sustained the Wagner Act because it clearly involved the regulating of interstate commerce.

The rationale for a Federal Union demands that there be a customs union, a "common market" to stimulate the commercial intercourse which is necessary so that every component can benefit to the greatest possible extent. There has to be central regulation of the things that are really central. I would argue that transportation matters such as automobiles and the driving of automobiles must, like labor matters, be regulated by the central authority. I think this is what the founders had in mind when they gave Congress the power "to regulate commerce \* \* \* among the several States."

Senator HART. You said in your prepared testimony that there were many rewarding jobs open to the trial lawyers of this country—exciting jobs. What has happened to the trial bar in Massachusetts now that they are operating under this no-fault program there? Have they gone to the environmental protection field or are they still busy with insurance law?

Mr. Joost. Well, just yesterday I heard on the news that the Massachusetts State Senate had given final approval to a bill to permit private citizens to sue those who are alleged to cause damage to the environment.

I believe that it is a better bill than the one that Michigan passed last year on the same subject. It has also passed the House and it has gone to a conference committee. According to the radio broadcast, the Associated Industries of Massachusetts are preparing a last ditch effort to defeat this bill which would permit individual citizens to sue to enforce the pollution—control statutes and regulations which are already law, but we believe that it will survive the conference committee and Governor Francis Sargent has indicated he personally believes private-remedy suits represent a very important approach to environmental protection.

Congress last year passed a provision authorizing "Citizens Suits" as one of the amendments to the Clean Air Act. The Federal law provides for reasonable attorney's fees to be paid by violators. This is proper—I think the lawyer should receive a fair compensation for what he does—but that is very different from the frequently exorbitant fees earned in the automobile—negligence business.

Senator HART. The Ogilvie bill in Illinois, is it a Massachusetts no-fault bill?

Mr. Joost. No, it is not. It is a different kind.

I would say, first, it is a misnomer to call the Ogilvie bill a no-fault bill. In fact, a headline in the *Wall Street Journal* declared that the "Ogilvie System Would Bypass No-Fault Concept."

"Others have agreed" that the Ogilvie bill is a no-fault system and one which, if enacted, will make it—unnecessary for the Congress to act.

When you break it down and look at the Ogilvie bill, you see that it is really not a system, it is not a plan. As a result of my work with statutory recodification and revision efforts, I very much believe that the legislative bodies should not try to copy the courts and decide things on a case-by-case basis, a little thing here and a little thing there. Rather, they should try to create systems that make sense and leave it to the courts to fill in the bits and pieces. The Ogilvie plan is not such a system. It is a hodgepodge collection of 13 different bills on different points. The 13 bills don't add up to a system, no-fault or otherwise.

In substance, the Ogilvie bills involve a scaling down, a reduction of the amount of money that would be paid by insurers to motor vehicle accident victims who bring tort suits. That reduction in payout makes two things possible: A reduction in auto insurance premiums which looks good, and a package of first-party-benefits. The first-party-benefits package would pay a maximum of \$2,000 per victim in medical, hospital, and funeral benefits plus a maximum of 52 weeks of wage loss up to \$150 a week in income continuation benefits.

What this amounts to is adding some no-fault frosting onto the same old negligence cake. The cake itself won't be changed except to scale it down in size.

The most important section of the bill is the section called "General Damages." It states that damages for pain, suffering, mental anguish, and inconvenience shall not exceed the total of a sum equal to 50 percent of the reasonable medical treatment expenses \* \* \* if \* \* \* the total of such \* \* \* expenses is \$500 or less, and a sum equal to the amount of such reasonable expenses, if any, in excess of \$500."

What this bill does is to say, sure, you can have a jury trial and you can get general damages for pain and suffering, but the jury cannot

find as a fact that your general damages are worth any more than your medical expenses if your medical expenses are over \$500, and the jury can't find—they will be in reversible error if they do—that your pain and suffering is worth more than 50 percent of your medical bills if they are less than \$500.

Now, I think this restriction represents unwise tampering with the jury. I think that if you give the right to trial by jury in a negligence case, you must really give the plaintiff that right.

The Ogilvie plan keeps the automobile jury, but puts it into a straightjacket so far as damages is concerned. Let's assume the plaintiff is a violinist and something happens to his hand; in the auto accident he breaks a finger, it is put in a cast, the total medical bill is \$200. However, for an entire season he cannot play with the Chicago Symphony Orchestra. What Governor Ogilvie is saying is that this particular violinist's pain and suffering and inconvenience for not being able to play with the Chicago Symphony for an entire season shall not exceed \$150. This bill is doing something that makes me very uncomfortable; you give or retain a right, you "press-release" it as a right, but you take away its substance.

There is another provision in the Ogilvie package that I would like to take the time to comment on. The section is called "Fraudulent Claims," and it is a substantive criminal law, not an insurance law. Just looking at it technically—and for 3 years I have been drafting and analyzing criminal statutes—this is a bad bill.

The criminal law can take on just so much. It is a little bit like the Great Lakes; it looks enormous, but in fact you can dump only a certain amount of indigestible material into it; dump too much and it ceases to live.

Now, what the provision says is that:

Any person who . . . indirectly . . . acts in concert with a person seeking to falsely and fraudulently represent . . . or exaggerate the nature and extent of motor-vehicle-caused injury or damage to property shall, if the sum so obtained or attempted to be obtained is less than \$100, be sentenced to not more than one-year imprisonment, or if the sum exceeds \$100, shall be imprisoned not more than 10 years.

Now, this is silly. First of all, there is no sure method of obeying it. All that is necessary for a criminal conviction is to prove the defendant acted in concert with someone who was trying to exaggerate a claim. You don't have to do it intentionally, you don't have to do it knowingly or recklessly or negligently; it is enough that it happens.

You can imagine the lawyer, whose client never tells him honestly what happened, who puts on evidence which in fact exaggerates by \$101 the extent of the client's injury.

That attorney could go to jail for 10 years.

Now, I think this is foolish. All that the section is going to do is to make lawyers reluctant to talk to their clients lest they be accused of acting "in concert" with one who exaggerates; it will thus have a "chilling effect" on the attorney-client relationship; as a practical matter it will not work. People are not going to be prosecuted for this, not in the present state of the criminal courts. The fraudulent claims bit—in so many cases it is not fraud—it is rather something which is built right into the negligence/liability insurance system. Assume you are paying \$300 a year in auto-insurance premiums, and

you don't have an accident for 10 years, and then something happens. You know how you paid in \$3,000 and you know it is so much that I think that you really do feel a pain in your head.

Mr. SUTCLIFFE. In discussions with Mr. Markus and the trial lawyers yesterday the subject of the Federal-State fund was raised. It was explained to us that that fund would be used to create liaison with Congress in order to facilitate our efforts in considering legislation. You have now told us that you, an expert, as demonstrated in these hearings, have been relieved of your position with the trial lawyers. Can you tell us who will be talking to Congress to help us in our reform of the automobile compensation system?

Mr. JOOST. I think I mentioned that the head of this department will be a nonlawyer, Mr. Alan Locke, whose brother I believe is press secretary to the Department of Transportation, and he will have at his command a Washington representative, Mr. Wayne Smith, who is also not a lawyer, and the services of Edelman & Co., a public relations firm in Chicago, with a New York branch, which will handle the account from a Hartford office.

So I think the help that the Congress will be getting—well, you can weigh yourself what contribution such a group of experts will make to the solution of the problem.

Mr. SUTCLIFFE. One more comment that is taken from yesterday's hearing transcript. This is a response of Mr. Markus to questions about LIFT and ADOPT. He said:

I might say the items you are describing, frankly I wish they were stronger and more effective. These items represent a very minuscule percentage of the amount the insurance industry is now spending in this area. We have reason to believe it is many millions of dollars.

From your vantage point, does that seem to be an accurate statement?

Mr. JOOST. I will have to answer "Yes," "No," and "I don't know." I do not know what the total figures are, either for LIFT or "for the insurance industry, but I do know that the LIFT ideas is on a curve of rising expectations. The State chapters and affiliates will be stimulated by this well-financed Department of Federal-State Relations which will send people around to show the local groups "how to do it," how to act effectively politically. LIFT and ADOPT programs—every State will have its own acronym—will probably be started in a majority of the States within a very short period of time.

Perhaps I overstressed the financial aspect of LIFT, the fact that it was called "a legislative kitty which is paying off." I do not think that money is the sole source of political and lobbying strength. The real strength comes from the fact that the trial lawyer has many skills, skills which can also make him an attractive political candidate or an effective campaign manager. He is accustomed to speaking. He is accustomed to responding to questions. He is not afraid to appear in public. He is accustomed to hostile questioning. He knows how to get information. He has a lot of friends and a lot of contacts. If he has been an able lawyer for 10 years or so, he knows an awful lot of people who think he is pretty good. If he goes in with this expertise and this ability and really takes to the stump to support and help a candidate with speeches and letters and phone calls, telling people what a great guy "Honest" Joe Doakes is, then Joe Doakes has a lot going for him beyond the, say, \$10,000 campaign contribution from LIFT.

You have to bear in mind that campaigns for State legislatures are much less expensive than campaigns for Congress. It does not take that much money. Millions of dollars could easily be wasted by insurance companies while tens of thousands precisely placed by trial lawyers on a particular race could mean veto-power control over a particular State legislature. The important thing is not just how much money a political fund raises and spends; it is also the way in which the money is placed, the way in which it is spent, that counts. For this reason, any comparison of lobbying expenditures between lawyers and insurance companies is of limited value.

Again, this is a very subtle way, and I think, therefore, a very effective way to influence legislation. You do not go after legislation; you go at the person who has a right to vote on legislation, namely, the person who sits in the State legislature. If a legislator votes "wrong," you find a strong opponent, the most attractive person in the district who will run, you fund him, you back him up, you have people prepare programs for him, literature for him, professionally advise him. Thus supported, he is going to have a good chance to defeat the "bad" legislator.

So I am not surprised at these 1970 results in Texas, that out of eight candidates backed in the Democratic primary for the State senate, six won. LIFT's first year, 1970, was their dry run. They can probably get a higher percentage than six out of eight in the future, but even 0.750 is a pretty good batting average.

Again, you see why it is difficult to answer your question.

Mr. SUTCLIFFE. I recognize that and appreciate your response.

The committee would like to draw for a moment, if you will permit us, upon your technical knowledge of the Massachusetts plan. You have mentioned the Illinois plan with the first-party overlay over the existing tort system. In Massachusetts they ostensibly have a first-party coverage for tangible losses as between the policyholder and his insurance company, but in that plan they created a subrogation-like arrangement so that the insurance companies of the policyholders have to get together to determine which of their policyholders was at fault. Then through arbitration the company whose policyholder is found to be at fault reimburses the other company for the amount of his first-party payments to his own policyholder as well as its claims cost.

Mr. Joost. It is something like that. I think they have a 400-word sentence.

Mr. SUTCLIFFE. I hope I got by with a 200-word explanation. What impact will this procedure have on the efficiency of the no-fault system in Massachusetts, and if you will, address yourself to what kind of inconvenience it will create for the consumer who has to have his insurance company talk to him pretty thoroughly about the accident and maybe even have his insurance company ask to come before an arbiter to explain what happened?

Mr. Joost. If this is in fact what is finally held to be the meaning of the Massachusetts statute, it will be yet another way in which consumers lose out. I have the laws here—Acts of 1970, chapter 670 and chapter 744. I pasted the two statutes together to determine what the law really says, but that doesn't help with internal questions. It is really very hard to know exactly what the Massachusetts no-fault

law means on many points. It has, conservatively, about 30 ambiguities, one thing in one sentence, another thing in another section.

To give you an example, there is a merit-rating provision. If you are claims-free for a year, you are entitled to a 2-percent discount on your insurance premium. But no one knows whether the discount is 2 percent per year cumulatively, intermittently, or totally. If you go 3 years without an accident, file a claim in the fourth year, and then you are accident-free in the fifth, and sixth years, do you then get a 10-percent reduction, a 4-percent reduction or a 2-percent reduction?

There are so many ambiguities and technicalities, that frankly I am not prepared to comment on the retention of subrogation, except to say that I believe your summary is accurate.

Mr. SUTCLIFFE. Do you know why it was done? What is the rationale for this kind of an arrangement?

Let me read one thing and see if you might concur in it. This is in the Massachusetts Association of Independent Insurance Agents and Brokers' booklet entitled "Special Report on Massachusetts Auto Insurance."

On page 13 they talk about what they entitle the "Inter-Insurer Subrogation." They conclude: "In practical effect this means that the liability exposure of companies remains essentially as good or as bad as it was before."

Is this provision included in there only to allow those companies who have all the good risks right now to keep them and to benefit from them?

Mr. Joosr. I think it is clear that subrogation between insurance companies is completely contrary to the theory of no-fault. Basically, the theory of no-fault insurance is that we let the loss stay where it falls but reimburse the victim for that loss from the insurance pool to which he and all other motorists have contributed. To subrogate on a case-by-case basis, to shift money back and forth between insurance companies on the basis of which company's policyholder was at fault, whether it is done by arbitrators or whether it is done by a court, involves a waste of time, a waste of people, a waste of money for hearings, for preparation, for salaries. The cost of waste is eventually paid for by the consumer in the form of higher-than-necessary premiums.

In most cases, the claims of A company vs. B balance out against the claims of B company vs. A in a rather constant ratio. If the law permits this back-to-forth subrogation, then the administrative costs of the system will be excessive. If the law permits this back-and-forth subrogation, then the administrative costs of the system will be excessive. If that agent's association brochure states that this is the Massachusetts law, it probably is, because the genesis of our no-fault law was a bill, I think it was S. 500, that was filed on behalf of the Massachusetts Agents and Brokers Association.

That original bill was changed enormously. Already two parts of the law have been held unconstitutional by the Supreme Judicial Court of Massachusetts. The trial lawyers' strategy was to make the bill into a Christmas tree when they saw that the votes were there in 1970 to pass no-fault—to put on so many goodies that the whole thing would fall because the Governor would be compelled to veto it because otherwise the insurance companies would yell too much.

They put in a provision that there should be a 15-percent rate reduction, not only for personal-injury policies but also for property liability and collision-insurance policies. There were other things that were put in also. Notwithstanding, the Governor in fact signed the final product. The legislature then amended some of the extras, and in November our Supreme Judicial Court voided the unrelated rate reductions. The insurance companies did in fact yell that they would no longer do business in Massachusetts, but they are all still there and doing handsomely.

There will have to be a great many appellate decisions in Massachusetts to finally determine all the parts of this law. In that context, I would like to command all the people who had anything to do with the drafting of S. 945. I think it is a very well-written bill. It is even better than the one that Senator Hart filed last year. Technically, there are fewer ambiguities. As a matter of fact, I talked with a personal friend just a couple of days before I came down here, a professor at Yale who has written a book on the subject, "The Costs of Accidents," and he says it is the best-written no-fault bill that he has seen filed anywhere this year.

Perhaps I overstress the importance of the draftsmanship, but when so many people are going to have to use a law, live with a law, operate under it, the language should be comprehensible to the layman. The law is not just for the lawyers, it is not our private property. It should not be expressed in archaic or arcane terminology, difficult for the layman to follow. If it applies to all, be it the criminal law or the automobile law, it should be comprehensible by all.

I think your proposed statute, while it could be improved some more, I think it is really very good.

Mr. SUTCLIFFE. That is all the questions I have. Thank you.

Senator HART. Thank you for the last comment which I can take with good grace because, as you suspect, the Members of the Senate rarely do the drafting, and I certainly had nothing to do with what you said was a good product, but I am delighted that you said what you did, because it will permit me to go to those who did draft it and indicate your judgment on the quality of it.

One last question because I have it thrown at me by some of my colleagues; and it is not the result of a trial lawyer lobbying my colleagues. It is just their preliminary reaction to this proposal. In short, they say I know we have got to do something about automobile insurance; I am for you; except you have gone too far. I do not want to have to pay to fix up some bum that drives with inexcusable carelessness. Can't you take care of that problem for me? That is the end of the question. How do you respond to that?

Mr. JOOST. Speaking personally, regardless of philosophy, I am afraid you are going to have to pay to take care of that inexcusable bum. The only question is how. We might, for example, have to pay for him or his dependents through welfare. We must face the fact that we pay because that man—that really bad driver, drunken driver—is more than a bum on the highway. That is only one part of him. He may also be a skilled craftsman in a machine-tool company. When he is all banged up and does not get rehabilitation and does not get good medical service and cannot come back to work for a long time, the Nation—not just the company—is deprived of his economic input into

the total goods and services of this Nation. We are paying, we do pay, every time someone is really hurt in an accident. The only question is how—out of general revenues or an automobile insurance pool into which the “bum” pays premiums which cover the risk?

I think the most commendable feature of your legislation—whether you did this consciously or not—is that you accept the fact that we are paying and say how do we best get auto victims back in business. I think that by giving the victim basically unlimited medical benefits plus unlimited rehabilitation benefits plus compensation for loss of earnings for a period up to  $2\frac{1}{2}$  years, you do everything that reasonable men can do to get that automobile victim back in business, be he a student or a housewife or a production worker or an architect or what have you. In my judgment, this emphasis-on-the-future is much more important; much more just; much more compelling than anything trial lawyers may say about the importance of pain and suffering and the dignity of a jury trial.

I think the Supreme Court will consider the seventh amendment argument in light of that essential justice and compassion. The bill's purpose is so terribly important that the Congress should act without delay.

Senator HART. Thank you.

Let me make one last comment. Normally when this comment is made it reflects a feeling that because of some act of individual courage and sensitive conscience somebody has put himself into the army of the unemployed by coming in here and testifying. With your extraordinary talents there would never be the danger that your services would not be sought. So I know that when you decided, as you put it here, “finally I concluded I had to accept the call to testify,” that you did not face economic deprivation from the decision, but that really is not the most difficult part of stepping up and speaking hard truths. Lots of people who are the beneficiaries of enormous trust income never speak.

The fact that you would come as you have to as one who has been a trial lawyers' lawyer and told us that no-fault is the answer is an act, I think, of considerable courage, and I am sure that Senator Magnuson, had he been able to stay, would have joined me in that expression.

Mr. Joost. Thank you, sir.

(The articles referred to earlier follow:)

[Vol. 1, No. 2 (Spring 1966)]

#### PORTIA LAW JOURNAL

**Basic Protection for the Traffic Victim—A Blueprint for Reforming Automobile Insurance.** By Robert E. Keeton<sup>1</sup> and Jeffrey O'Connell.<sup>2</sup> Boston, Toronto: Little, Brown and Company. 1965. Pp. xv, 624. \$13.50.

A brief review can scarcely do justice to the complexity, intricacy, and thousands of hours of research, thought, analysis, discussion, and consultation that lie behind this ingenious and creative work. It is a pathfinder in a difficult area. Whether the proposed new basic automobile insurance system, based essentially upon strict rather than negligence liability, *should* be adopted is a question that lies within the responsibility and expertise of the legislatures. Clearly, however, each state legislature and even the Congress (what is more inter-state

<sup>1</sup> Professor of Law, Harvard Law School.

<sup>2</sup> Professor of Law, University of Illinois Law School.

commerce these days than automobile driving?) should study carefully this proposed reform and the justifications advanced for it.

The authors state that five major shortcomings affect the present system of compensation for automobile accidents in each of the states: (1) many injured persons receive no compensation and others receive less than their economic losses because the other driver hasn't enough insurance or assets, or because the victim must show the other person was at fault and he was legally blameless. Proof, at times is hard to get, *e.g.* if the accident was hit-and-run; (2) the present system is extraordinarily slow and cumbersome, what with delay in the courts, and the impecunious victim, with his back against the wall financially, may settle for less than his just deserts; (3) there is too much unfairness, as a practical matter, with some people getting more than they deserve and others less; (4) the fault system is extraordinarily expensive to administer and this heavy administrative cost is added to the premium bill each car owner pays; (5) the present system is a constant temptation to dishonesty—"inducements to exaggeration and invention strike at the integrity of driver and injured alike, all too often corrupting both and leaving the latter twice a victim—injured and debased." Substantial documentation is advanced to support each of these assertions.

The basic corrective advanced is absolute basic compulsory automobile insurance. Under such a system, *anytime* a driver is in an accident *his own insurance company* shall compensate him or his guest, for their "loss," which shall not include pain, suffering and inconvenience. Benefits would be paid monthly as the loss accrues. Tort liability would remain, but only in major cases (where damage for pain and suffering exceeds \$5,000 and other tort damages exceed \$10,000).

The proposed statute is a careful attempt at reform. If substantially enacted, it would provide a fairer and more sensible solution to the grave national problem of compensating automobile accident victims.

One question that arises, however, that the authors do not consider, is whether one can ever truly compensate an automobile accident victim in *dollars*; *e.g.* a man who loses his legs or a child who no longer has a father? No one has said that *all* auto injuries and deaths can be eliminated, but many have suggested that if automobiles were designed with safety rather than sex-appeal as the first order of business, the staggering highway toll would be reduced. The most "Basic Protection for the Traffic Victim" would seem to be that the government do everything possible to protect a man from ever becoming a traffic victim in the first place, through enforcing higher standards for driver skill and demanding a tank-like' approach to auto design.

ROBERT H. JOOST.\*

[From the Boston Globe, Tuesday, Dec. 6, 1966]

#### LETTERS TO THE EDITOR

#### KEEP THE COMPULSORY

... With all due respect to the governor of the commonwealth, the leader in Massachusetts of the party which I personally support, the financial responsibility law idea is an irresponsible "solution" to the problem of automobile insurance. Compulsory insurance must be retained. But the rates must also be cut significantly. The Dukakis bill is based upon the results of long and painstaking research by a group under two highly regarded professors of law and tort law authorities. The Dukakis/Keeton-O'Connell plan will not eliminate the right to trial by jury, as some responsible lawyers unfamiliar with the details seem to be afraid. Insurance companies will not lose money, nor will the plaintiff's personal injury lawyer, whose livelihood rests on a contingent fee, suffer unduly.

The political parties and their representatives in the Legislature and executive, and the members of the bar who are all "officers of the court" have a responsibility to the people and to the commonwealth that should rule out self-interest, personal pocketbook considerations, and partisanship on an issue so basic and vital: the right to be sure of compensation for automobile injuries (hence the need for compulsory insurance) and the right to drive a car, which often equals the right to employment in today's world (hence the need for significant reduc-

\* Member of the Massachusetts Bar; former assistant to the Editor, Journal of the American Trial Lawyers.

tions, not increases, in automobile liability rates). The Keeton-O'Connell plan is far from perfect, but unless something better comes along it should be seriously considered and tried. The problem is critical—nay-sayers are not enough.

ROBERT H. JOOST.

---

[From the Boston Globe, Friday, Apr. 30, 1971]

#### LETTERS TO THE EDITOR

##### NATIONAL NO-FAULT

I was puzzled by your editorial on no-fault auto insurance entitled "Volpe's Wise Proposal" (April 19).

The editorial is puzzling primarily because it is no secret in Washington that Volpe was prepared to recommend national no-fault auto insurance legislation and that his recommendation was sabotaged by White House action.

The Globe may be right in arguing that a rigid national system of no-fault auto insurance would not be a sensible course at this time. On the other hand, if no-fault makes sense in Massachusetts, I see no reason why it does not make sense for the nation as a whole.

Legislating on a national basis on the subject of motor vehicles is hardly a novel proposition. I doubt that anyone would seriously suggest today that we should not have national standards for motor vehicle safety. Congress has also acted to impose auto emission controls on a national basis. In fact, it has gone so far as to deny states jurisdiction of any kind over auto emission controls.

Accordingly, the case for national no-fault auto insurance in some form is a strong one. Simplicity and uniformity of treatment are essential in a nation where so many of us cross state lines in motor vehicles every day. It would be tragic, in my opinion, to encourage a situation in which a crazy quilt of state no-fault laws emerges which results in changes in basic rules or gaps in coverage simply because a motorist leaves his home state.

There may be a sensible compromise between the no-action position of the Nixon Administration and the advocates of comprehensive national no-fault insurance. Congress could pass legislation this year requiring the states to enact no-fault laws within the next two years. The Secretary of Transportation would be given the authority to approve each plan but every state would have some latitude in developing its details so long as the state plan met certain basic criteria.

Such a course may be the one which Congress ultimately takes this year. It is, in my view, the minimum required if we are not to subject the motorists of the nation to a hodge-podge of conflicting laws and insurance policies in the years to come.

MICHAEL S. DUKAKIS.

---

[From the Journal of Commerce, Apr. 26, 1971]

#### BAY STATE'S INSURANCE INDUSTRY HIT

##### GOVERNOR CHARGES PROFITS ARE NOT PASSED TO CONSUMER

BOSTON, April 25.—The auto insurance industry was bitterly criticized here today by the Commonwealth's governor for failing to pass onto consumers the substantial savings the companies have incurred from the Bay State's three-month old no-fault auto insurance system.

Gov. Francis W. Sargent said that during the first three months of this year, the underwriters have seen their claim costs drop by over 35 percent but have not come forward with plans to lower premiums.

The governor also alleged that many insurers have tried to obscure the options in the no-fault program which would lower their auto insurance rates.

"The average paid claim cost in the first quarter of last year was \$205," Gov. Sargent said. "The average paid claim cost in the first quarter of this year is \$131. The total amount of paid losses in the first quarter of last year were \$359,590—this year they are \$229,479."

## 36 PC REDUCTION

"That is a 36 per cent reduction (in claim costs) this year over last," the governor said in an address before the Massachusetts Association of Independent Insurance Agents and Brokers.

The governor said if the average paid claim costs for 1971 hold at the present rate through June they will be 69 per cent lower than the first six months of 1970.

"Translated into possible future premium reductions that comes out to a further premium cost cut of 25 per cent for bodily injury insurance, though not property damage and collision for in those years price inflation and the high cost of auto repair drive these costs steadily up," Gov. Sargent said. "But in bodily injury, the only area affected by no-fault, we can at least hope for further cost cuts if present experience continues."

Gov. Sargent said he would release a statistical summary next week on the first three months of the first in the nation no-fault system.

"The great irony of no-fault so far is that the industry that fought it so hard is now profiting the most from it," said the governor. Further, the industry, while it profits, blocks the consumer from the benefit of the new system, he said.

Gov. Sargent told the insurance men they were keeping the public ignorant about how to take advantage of savings on auto insurance premiums.

"Last year we provided options in auto insurance to let the buyer build his own insurance program through bodily injury deductibles for those with sufficient health insurance," he said, "and \$100 and \$200 deductibles in property damage insurance."

"We encouraged companies to provide further deductibles to cut cost of collision and comprehensive insurance," he said.

"I am told the industry in some cases has not only failed to inform customers of these options but has actually refused to allow their purchase," Gov. Sargent said. "Worst of all, I am told that many companies have forced customers to buy more insurance than they want in order to buy any at all."

Gov. Sargent said he would order a "step up in investigation of the abuses so far charged—and the industry had better be ready to reply."

---

[From the Boston Sunday Globe, Apr. 25, 1971]

## WIRE TAPS

Attorneys are wondering about a couple of ethical questions raised by the activities of the lawyers bringing the test case of no-fault auto insurance law. The lawyers, Robert Cohen and Alexander Cella, have sent other attorneys a mimeographed form offering for sale at \$50 per set the two-volume brief (\$45) they have prepared on the case and the appendix (\$5). The case is to be heard next month before the Supreme Judicial Court. Fellow lawyers say (1) they've never heard of a lawyer openly selling a brief—"It's a little bit arrogant before you even win"—and (2) the appendix consists of court records, which may not be theirs to sell.

## A TRIAL LAWYER'S LEGISLATIVE WORKBOOK

## HOW TO DO IT

Q.: "What do you feel is the best method to establish and keep rapport with sympathetic legislators and how do you suggest bill introductions, legislative advocacy and hearings be conducted?—Do you have an active 'Legislative committee' in your state trial lawyers organization and how does it work?—Do any trial lawyer groups make campaign contributions to candidates to legislative office, or is this done on an individual basis? Outside of finance, do they aid him in vote-getting? How do you go about encouraging bright young plaintiff-oriented lawyers to seek legislative office? In general, how does your state organization handle 'legislative advocacy', appearance before committees, and follow-up on bills? Do you think it is necessary to have a full or part-time man on the job at the state capitol to keep members informed?"

(Texas: William R. Edwards.)

We have found that the best method of establishing and keeping rapport with legislators whether sympathetic or not (hopefully securing the help of those who are not necessarily sympathetic by so doing) is what I like to call the "buddy system". By this we mean the real responsibility for each of the legislators is placed on the trial lawyers located within their respective districts. We expect our members to befriend the legislators, to get to know them not only as political friends, but as personal friends. We endeavor to secure representative trial lawyers' membership in the district of each legislator. By virtue of such personal contact, we are able to secure the help and understanding of many legislators who are not lawyers and who have not had any real experience with our problems. Additionally, in the past year, we have made some progress toward securing help from non-lawyers convincing them that our programs are right and that by contributing their money and influence through us, such persons may be able to be of much greater influence in securing passage of such legislation that they could otherwise. One such non-lawyer from Dallas was of extreme help to us in our recent passage of the Texas Tort Claims Act, his interest in the matter having accrued by virtue of the death of a daughter caused by governmentally-immune conduct. Generally speaking, if a bill to be introduced is on its face one which is of a public nature, that is for the good of the people, as opposed to the good of the lawyers, we do not hesitate to have one of our strong supporters in the legislature, even one of our members, introduce the legislation, and in fact encourage it. However, as to strictly lawyer legislation, we prefer to get a non-lawyer member, one whose interests are not apparently aligned with ours to introduce the bill if possible. Because of our continued twelve-month-a-year program of legislative contact, we have never had any difficulty in securing introduction of any bills by the "proper" people. With respect to legislative hearings, our experience has indicated conclusively that if we will work closely with those committee members who agree with our position as to any particular legislation, and actively participate in the preparation of the case for our side of the bill, much as we would prepare a court case, that by virtue of careful preparation, including expert witnesses, statistics, etc. that we are ordinarily in a position to place before the committee hearing the bill a far better picture and far more effective case than the other side has usually taken the time or the effort to prepare. *Careful preparation* of the case for or against the bill cannot be over-emphasized.

We have a legislative committee and it is very active. It is the function of our legislative committee to see to the election of representatives who will support our positions, to formulate our legislative programs, to secure introduction of the bills we propose to pass and to shepherd those through to final passage and signature by the Governor. During the legislative session, in our office in Austin [state capital], we maintain a continuous program of public relations including an open bar and a buffet luncheon. During the last session of the legislature, we averaged in the neighborhood to twenty or twenty-five representatives and senators for lunch each day the legislature was in session. We have *one cardinal rule* with respect to the office we maintain in Austin across the street from the Capitol grounds: No lobbying may be done in the office. No pending bills may be discussed unless a particular legislator brings up the subject and asks that it be discussed. We have tried to make our office a place where the members of the legislature can come to escape the continual bombardment of lobbyists—where they get a drink or a good meal and relax. We are convinced that the legislators appreciate this rule.

Approximately two years ago we instituted a bank-draft plan whereby our members and anyone else we can persuade to do so contributes \$10.00 a month to a fund maintained in Austin. The fund has been recently renamed and designated LIFT (Lawyers Involved For Texas). This fund is available for use in election contests for either State Senator or State Representative—it is not available for use in the campaign of any candidate seeking state-wide office. The fund is administered by the legislative committee and the President of the Texas Trial Lawyers Association. It is distributed carefully to secure the greatest effect by the use of the money. We expect contributions wherever possible to be made on an individual basis. This program is in line with the "Buddy System" outlined above. However, there are obviously areas in which our membership is not in a position to adequately finance a candidate. Funds are made available on such a basis. Occasionally, there will be an extremely important race between a good friend and a bad enemy of the Association. In such instances we

may apply rather substantial amounts of money to the particular contest. Our members are encouraged to participate actively in the campaigns of legislators and candidates. We do all that is within our power—financially and otherwise—to support actively the election of candidates who are philosophically attuned to our goals. This is the only way it can be done.

The best encouragement that can be given to any candidate for elective office is the chance of winning. We find that our program in Texas has enabled us to secure candidates—both trial lawyers and non-lawyers—to run for office. The non-lawyers are only too ready to assist us when they fully understand our goals and programs. After all, what we are attempting to secure in the way of legislation is in the final analysis good for the people. So long as we continue in that posture, we do not feel it is important to lawyer as opposed to non-lawyers represent us in Austin. So long as our representatives are properly attuned to our program, the non-lawyers are often more effective in securing the passage of our legislation, than are lawyer members.

With respect to each bill that is introduced, a subcommittee of the legislative committee of the Texas Trial Lawyers Association is appointed. This subcommittee has the primary responsibility for the particular bill. The subcommittee is charged with: (1) drafting the bill, (2) securing the sponsors in both the House and Senate, and (3) shepherding the bill through the legislature. The subcommittee is responsible for the preparation and presentation of evidence at committee hearings. The subcommittee is also responsible for keeping the association informed of the bill's progress so that the association may—if necessary—put on a "show of force" at hearings or votes, etc., by calling the membership to Austin at appropriate times. We maintain a constant review of bills introduced to assure that no legislation simply slips by us without our knowledge. This is another task of the legislative committee. Regular reports on what is happening in Austin is disseminated by letter to all the members of the Texas Trial Lawyers Ass'n.

[Because of space limitations, only the Texas responses have reproduced. They appear to contain in more comprehensive form most of the ideas mentioned by other states' Key Men.]

Additional Texas ideas mentioned at regional Key Man Meeting, Denver, June 19, 1970:

"We have approximately 1,200 members in the TTLA. The only requirements for membership are that (1) one pay \$100 a year in dues and (2) be a lawyer who does not habitually represent insurance companies.

"We have had an executive director since 1962. The present Executive Director is a *professional lobbyist*, not a lawyer. He teaches us

"To have a successful trial lawyers' legislative program:

- #1. You have to have an appealable piece [pieces] of legislation.
- #2. You have to have a significant number of people who are able to discuss completely and intelligently the merits of that legislation.
- #3. Your program should be neither a Democratic nor a Republican program; neither a Populist nor an American-ist program. It must be a program for the public.

#4. The scope of the legislative program should be very narrow: to get more justifiable money into the hands of claimants.

"Legislative advocacy is a complicated art; there are no simple routes to effectiveness. The most unsuccessful lobbying group at the last session of the Texas legislature was a group that left a fifth of best-quality whiskey in every legislator's car. Reaction: "Hub, those ——— think they can buy my vote with a bottle of booze. ——— them." Subtlety and hard, intelligent work are *essential*.

UP, UP AND AWAY!!

LIFT is the latest effort of Texas Trial Lawyers Association. It stands for Lawyers Involved for Texas, and it's a runaway success . . . The *El Paso Times* reported in its Capital Column June 14th, that *LIFT was responsible* for the Democratic nomination in this year's primaries of six of the eight candidates it backed for the *State Senate*.

LIFT is a legislative kitty which is paying off. Most of your officers are contributing \$10 per month on a bank draft authority to LIFT.

If you want to be a part of the movement for *comparative negligence* in Texas, for statutory authority to let jurors know what they are doing in *special issue verdicts*, and for a successful rejection of *Keeton-O'Connell* schemes, in other words, if you want your practice to *survive*, better get with it.

Send a check, any amount, to *LIFT, 201 Westgate Bldg, Austin!*

Observation by Nebraska State Senator [Nebraska has only one house of legislature—49 Senators] at Denver Key Man meeting, June 1970:

"We never hear from the lawyers of Nebraska except when we are about to vote on a bill that is of interest to them. Thus, it is not surprising that when we voted on repeal of the automobile guest statute, there were only 8 votes out of 49 in favor of repeal. Contrast the trial lawyers whom we never see with the bankers who are the most highly organized group in the state. The Nebraska Bankers Association is always around to lobby and to help and to answer questions—including questions totally unrelated to legislation affecting banks. We build up confidence, rapport, friendship with the bankers. The lawyers are unknowns whom we ignore in turn."

GRAVES, DOUGHERTY, GEE, HEARON, MOODY & GARWOOD,  
THE AUSTIN NATIONAL BANK BUILDING,  
POST OFFICE BOX 98,  
Austin, Tex., February 16, 1967.

Byrd, Davis, Eisenberg & Clark,  
Texas Trial Lawyers Association,  
214 Austin National Bank Building,  
Austin, Tex.

(Attention: Mr. Jack C. Eisenberg.)

DEAR JACK: You have inquired of us whether the expenditure of dues of the Association for purposes of retaining a legislative counselor might have a bad tax effect on the Association.

In our opinion, which must necessarily be rather hastily given because of the time pressure involved, this would have no effect upon the tax situation.

If you will refer to our letter of May 28, 1965 regarding the deductibility of dues or contributions you will note that Denny Ingram concluded that dues were not deductible as contributions but only as ordinary and necessary trade or business expenses. In reaching this conclusion, Denny opined that the Association could not qualify as a charitable organization under IRC Section 501(c)(3). I agree with his conclusion although I have not re-checked it in detail and am relying on it. It is true that 501(c)(3) organizations are forbidden to attempt to influence legislation as a substantial part of their total activities. However in my view the Association falls more nearly under Section 501(c)(6) as a Business League, Chamber of Commerce, or organization of the same general class, being an association of persons having some common business or professional interest, the purpose of which is to promote such a common interest and not to engage in a regular business of the kind ordinarily carried on for profit. If I am correct in this conclusion, and I think I am, the most recent authorities which I have been able to find indicate that legislative activity does not defeat the exemption if it is otherwise allowable, and this even though the legislative activity is the organization's sole or principal activity. See *Washington State Apples, Inc.*, 46 B.T.A. 64; Rev. Rul. 61-177, 1961-2 C.B. 117, modifying Rev. Rul. 54-442, 1954-2 C.B. 131. Nor does the statute itself contain any requirement that organizations falling under 501(c)(6) refrain from legislative activity as does Section 501(c)(3), applicable to charitable organizations generally.

For the above reasons, I do not think that the retaining of legislative counsel by the Association would effect either its tax status or the tax status of dues paid in by its members. I hope that the foregoing answers your question adequately and if you have any further questions or wish further light on the subject, please let me know and I will attempt to oblige.

Yours sincerely,

THOMAS G. GEE.

Texas Association of Plaintiffs Attorneys,  
314 Austin National Bank Building,  
Austin, Tex.

(Attention: Mr. Tom Davis.)

GENTLEMEN: This letter is designed as our preliminary opinion to you concerning the status of the present method of dues payment in your association, your present organizational structure, and recommendations for future operation and changes in structure.

Your present method of dues payment involves variance in the amount of the dues. You are concerned that some large dues payments or contributions might be denied income tax deductibility to a fixed dues schedule and without any definite or substantial added membership benefit.

The variance of dues is a procedure quite customary when there are varying classes of members in a professional organization. Customarily, enhanced benefits accompany a more expensive form, or higher class, of membership. Such benefits might include the receipt of additional literature, more prominent personal publicity, and perhaps even a forgiveness of future dues for a definite or indefinite period of time. Generally, extremely wide variations in dues payments of classes of members is seldom found.

Accordingly, some of your dues payments are not too ordinary in their nature, and there does indeed exist a serious question as to their deductibility when made in large amounts virtually in the nature of a gift or contribution rather than within an established reasonable framework of dues.

There are only two possible theories under which the dues can be deductible:

First, that they are donations to a charity pursuant to Internal Revenue Code (I.R.C.) § 170. Since contributions to a local bar association have been denied such favorable treatment and since there is ample authority of similar import for other professional and trade organizations, it must be concluded that the dues are not deductible charitable gifts. GCM 4805, 1928 C.B. 58, and *P-H Federal Taxes*, ¶ 4522. The basic reasoning is service to a private rather than a public cause. Authority granting deductible treatment for gifts to organizations such as The State Bar of Texas must be distinguished because that type of an organization is deemed an arm of the government. R.R. 59-152, 1959-1 C.B. 54. Also note that the fact that an organization is a charity exempt from income taxation under I.R.C. § 501 or exempt from income taxation simply because it does not make a profit, does not control the question. The tests of coverage under § 170 and § 501 are different.

Second, the dues may be ordinary and necessary trade or business expenses. I.R.C. § 162. Regulations § 1.162-6 expressly allows the deductibility of professional expenses including "... dues to professional societies and subscriptions to professional journals. . . ." However, each such deduction must withstand the test of being "ordinary and necessary." A review of the cases and treatises reflects much litigation or administrative activity concerning this language. See 1 Rabkin & Johnson, *Federal Income, Gift, and Estate Taxation*, § 3.02; *P-H Federal Taxes*, ¶ 11,031; 4 Mertens, *Law of Federal Income Taxation*, § 25.09, 25.122; and Carson and Weiner, *Ordinary and Necessary Expenses* (1959). It is quite possible that a large contribution not providing any added benefit over a smaller contribution might be neither ordinary nor necessary.

How can this doubt be resolved? Unfortunately, the lack of authority in the area provides little possibility of a reliable answer. But, some guidelines, including observance of the patterns of other organizations, can be evolved in order to lessen the probability of serious questioning of the dues system. First, classes of memberships can be based upon some reasonable bases such as time in practice, honors and publicity accorded certain classes of members, special privileges to certain classes of members, etc. Second, advance payment of dues might be permitted for reasonable periods. Third, a companion organization might be founded which serves the general public more so that it will qualify as a charity under I.R.C. § 170 to which a deductible contribution can be made. Compare, for example, the American Bar Association Endowment and the American Bar Foundation, two charitable foundations which are allied to the American Bar Association. If such an allied organization is formed, you should seek a tax ruling of its status for contributions and for exemption of its income.

As for your organizational structure, we would recommend that your association be reorganized as a Texas non-profit corporation in order to provide the limited liability, definiteness of structure, and other attendant benefits thereby offered. This structure is easier to explain to taxing authorities, offers a clear answer of lines of authority for contractual relationship as well as any possible intraorganizational disputes, and avoids the general partnership liability each member now has.

We will be glad to confer with you to provide further detail on any of the foregoing matters.

Sincerely,

DENNY O. INGRAM, Jr.

Senator HART. Because of a phone call we must recess briefly.  
(Recess.)

Senator HART. The committee will be in order.

Let me welcome Mr. John J. O'Brien of Newtown Square, Pa.  
Mr. O'Brien, we appreciate your testimony.

#### STATEMENT OF JOHN J. O'BRIEN, NEWTOWN SQUARE, PA.

Mr. O'BRIEN. Senator Hart and committee members, I reside in Newtown Square, Delaware County, Pa. I am employed as an insurance manager by the Franklin Mint, Inc., of Franklin Center, Pa. I am here as a concerned citizen to speak on behalf of automobile liability insurance reform. Before giving my testimony, it might be helpful if I commented on my educational and employment history. After receiving a bachelor of law degree in 1950, I was employed for approximately 11 years by insurance companies in various claims positions, including those of adjuster, examiner and manager. I was national director of claims services of Avis Rent-A-Car Systems for 3½ years and insurance manager of the Mack Truck Corp. for 5½ years.

Over the years, I have become totally convinced that our present system of tort liability does not satisfy the principal purpose of liability insurance, which is to see that innocent victims are paid their losses. Of course, as an insurance claim representative, I was taught that was not the principal purpose of liability insurance, rather I was educated to believe that my principal responsibility, and I might say properly so, was to conserve company assets by settling claims for the lowest possible dollar. A good settlement most frequently was not one that was fair.

It is a well-documented fact that the current system works unfairly. It favors the affluent and mitigates against the poor. The individual injured in an auto accident who is living from payday-to-payday is a soft touch for an experienced adjuster. There is also gross inequity in the amounts paid in the settlement of claims. The small bodily injured claimants are often overpaid, while the seriously injured often collect but a fraction of their losses, after payment of attorney fees that average 25 percent of benefits.

We hear more and more complaints about the soaring cost of automobile insurance, as well as the inability to purchase coverage at any cost outside of an assigned risk pool.

The backlog of tort cases is insuring that those who have to pursue their claims in court can in some cases wait as long as 5 years for a verdict. If they are unable to work and require income, to whom do they turn? Quite often they are carried by their attorneys. I believe that in agreeing to this, they are joining the attorney in basically unethical conduct. In many cases their personal resources are totally inadequate.

The fault system is obviously failing to meet the needs of motorists, and reform appears to be imminent.

I have read with interest the Hart-Magnuson proposed "Uniform Motor Vehicle Insurance Act (S. 945)" which incorporates the no-fault liability insurance concept. I believe such a law by the Federal Government is desirable, since it is apparent that the States will not

voluntarily adopt uniform legislation. By mandating a model bill to the States the problem of liability insurance reform would be resolved.

In my opinion, the legislation under consideration could serve as a model bill, subject to some amendment and deletion. The bill's definition of catastrophic loss (page 3, lines 17 through 21) is too restricted. Would not the term "catastrophic harm" as defined, exclude, for example, a surgeon or concert pianist who lost the tip of a finger, or one who suffered residual stiffness in his fingers?

The definition of economic loss (page 4, lines 7 through 15) should be amended to pay a percentum of the individual's income without limitation. A limit of \$1,000 a month would in many instances be totally inadequate to meet the needs of injured claimants.

Page 11 from line 19 through line 21 of page 12 should be deleted. This portion of the act has to do with putting an additional part of the burden on the trucking companies.

In my opinion, the provisions contained in this section are unreasonable. Those underwriters who specialize in insuring heavy-duty trucks would of necessity require more premium, the cost of which would in all probability be passed back to the public. It would be more equitable to assess the cost against all motor vehicle owners.

I was delighted upon reading the provisions of the proposed "Motor Vehicle Group Act (S. 946)." As a corporate insurance buyer one of my most frustrating experiences is to have someone in management come to me with a problem involving his personal automobile insurance. Despite the clout of hundreds of thousands of dollars in premiums for which I am responsible, I can rarely get my principal underwriters to extend coverage to an individual who has received a declination.

As an example, one of our executive's 17-year-old son worked and saved to buy an automobile. After the acquisition, the car sat in the driveway for months because he couldn't obtain insurance. The young man finally saved the \$374 required to buy insurance in the Pennsylvania assigned risk plan. He has inadequate coverage—\$10,000—\$20,000 bodily injury and \$5,000 property damage—and is a menace in the sense that if he has a serious accident, for which he is at fault, severe economic loss could be incurred by one or more innocent people.

If I could offer the employees of my firm group automobile insurance, underwritten subject to the terms of S. 946, many of these problems would be eliminated. The reason I cannot make such an offer is that the interests of the few is being given precedence by the States over the interests of the many. The insurance agency system will be hurt if corporations and associations are permitted to have access to group auto coverages. That would be unfortunate but again the special interest of a particular class should not be given priority. The reduced cost, easy payment by payroll deduction and availability of coverage to the individual, who in many instances cannot buy insurance at equitable rates, far exceeds our concern for the agency system.

In addition to the foregoing testimony, I will be happy to answer any questions of Senator Hart.

Senator HART. Mr. O'Brien, just as I commented to Mr. Joost, it is not an easy decision for you to come down here and speak this way, which makes it even more obvious my obligation to thank you on behalf of the committee for telling us this.

You speak from a background that is very broad, and I would think it is the kind of testimony that would be most persuasive.

Mr. O'BRIEN. Thank you.

Senator HART. You mention that in the insurance business a good settlement isn't necessarily a fair settlement.

Mr. O'BRIEN. That is so true.

Senator HART. Could you tell us a little more fully what you mean by that?

Mr. O'BRIEN. I have in my own experience defended settlements that I have made, third-party liability settlements, to my immediate superiors, and when they didn't compliment me, I have said to them, "but it was a fair settlement." And most often as not, they would turn to me and say "Fair, but not a good settlement."

And we knew what was meant by a good settlement. The first call settlement made by an adjuster for the out-of-pocket expenses, plus a few dollars over and above for inconvenience, pain and suffering is considered a good settlement. Insurance companies favor first call settlements for the primary purpose of closing out claims before the injured parties fully realize the extent of their damages or injuries.

Senator HART. How would they become fair settlements under the mandatory first-party system?

Mr. O'BRIEN. Because they would no longer be adversary settlements. It would be a matter of settling a claim with your own insured. You treat your insured a bit differently than you treat a total stranger whom you believe is interested in taking as many dollars from you as he can.

That is not to say that the insured will not be interested in getting as many dollars as he can, but the relationship will be totally different and it does tend to a more equitable settlement.

Senator HART. That is probably the way I should have put the question. It would produce a more equitable settlement?

Mr. O'BRIEN. That's right.

Senator HART. Certainly, those expenses legitimately incurred, including the potentially substantial area of rehabilitation would be a fixed obligation.

Mr. O'BRIEN. That is correct. Additionally, Senator Hart, the injured party, if treated improperly by the claims adjuster has his agent to turn to who in turn can go back to the underwriting department, the sales department, if you will, and it usually has sufficient leverage to bring the claims department in line.

Senator HART. You said one of the pressures that operates under the existing system is the delay where a man is in need of funds. You mentioned a backlog of court cases.

Now, in our hearings the suggestion has been made to us that we ought to establish an arbitration system, at least for the smaller claims. That would both reduce the court backlog and it would lower expenses, administrative expenses.

Philadelphia does arbitrate, as I understand it, claims under \$3,000. As you have observed, has there been any savings in administrative costs?

Mr. O'BRIEN. I have not been in the Philadelphia area for more than a year and a half. I am not prepared to say I know firsthand, but comments that have been made to me would lead me to believe that there isn't any real savings.

I can't see that arbitration and the speeding up of the settlement of cases, reducing the court backlog, would help to reduce the cost of insurance to individual policyholders.

If anything, I think if you speeded justice up, more people would be inclined to obtain the services of attorneys to represent them in their cases.

Senator HART. That certainly was the point that was made or the conclusion that was reached in a very detailed study that the Department of Transportation made.

You put your finger on a section of the bill that all of us realize we are going to have to work on, and that is section 4. You spoke of the surgeon who might lose the tip of a finger. You have already contributed substantially to the work of this committee, but maybe we can enlist you for another job.

If possible, could you suggest, in writing later to us, some language that might help us achieve what we are really after to safeguard, get rid of the spurious pain and suffering claims and yet recognize in the case of the surgeon who loses a finger that there is very substantial economic loss that would be called pain and suffering.

Mr. O'BRIEN. It could be a matter for the medical profession. It has been suggested to me that perhaps in pretrial a court-appointed doctor, or panel of doctors, could evaluate the injury sustained by the would-be plaintiff, and if, in the opinion of the appointee, taking into consideration the person's occupation and other pertinent circumstances, the doctor or panel of physicians reported back to the judge, yes, this individual has suffered catastrophic loss, this would be his or her entry into court to sue in tort.

Just having a term to be defined by—let me ask you a question. Who would determine this, as you have drafted the bill?

Senator HART. A court, as it is drafted here.

Mr. O'BRIEN. May I also comment on using, as in the case of Massachusetts, \$500 medical expense as the trigger for a tort action?

Senator HART. Yes.

Mr. O'BRIEN. I am amazed that anyone today would think that this was any sort of barrier. In any major city, I can put myself into a private room for 3 or 4 days for not necessarily treatment but just examination, and I will have a bill in excess of \$500. Once again I think the medical profession should be brought in, and this should not be tied to medical expense, because any able attorney in conjunction with doctors, who, in many cases, are more than willing to cooperate, can build the client's medical bills to the necessary level.

Senator HART. Capable but not ethical.

Mr. O'BRIEN. There is a difference.

Senator HART. You heard the testimony earlier today from Mr. Joost. You are recommending the adoption of S. 945 so that it applies nationally. Does this suggest that you believe that the States would not move in a uniform way to change the present compensation system?

Mr. O'BRIEN. More than suggest. I am totally convinced that the States will never do it. I attended a meeting of the State of Pennsylvania Chamber of Commerce Insurance Consumer Committee, of which I am a member, just a few weeks ago, and the motion was made that we advise the chamber that action should be taken in the area

of a State no-fault plan, but should it be the Massachusetts plan, should it be another plan, no one seemed to know.

As sure as I am sitting here, if 10 years from now the Federal Government has not moved in this direction, you are going to have a hodge-podge of laws that will be intolerable. I don't want to see the Federal Government set up a bureaucracy to administer a Federal program. I think it is to the best interest of us all that the States have a model bill and administer the bill under some form of supervision by the Federal Government.

Senator HART. Again, Mr. O'Brien, I am grateful you could come and speak as you have. I am sure that you will not be applauded by all of your old friends in the business but, as you say here, the special interest of the particular class should not be given priority.

Everybody buys that as a principle and yet human nature being what it is, we never recognize that we are making an exception to that principle often. We just don't realize it.

Mr. O'BRIEN. That was not true in the case of the corner grocer. If he had had the wherewithall to have legislation enacted against supermarkets, we would be waiting in block-long lines to buy our groceries from the man on the corner.

So, what I am saying is we have reached a point in time where we must have change. The change is painful, but after it takes place, I think it will work better for everyone. I am now being offered that which the industry refers to as the mass marketing of personal lines—homeowners and automobile insurance on a payroll deductible basis.

Of course, under mass marketing, we still have the problem of the individual who is subject to underwriting. It will not answer—it will not solve the problems that would be resolved by group coverage, but the industry itself recognizes that it has to move in that direction if it is to avoid group personal lines.

I am referring to my comments under 946.

Senator HART. Yes, you were very explicit in your support of that, very explicit, and the example you cite is a sobering one.

Again, we are very grateful that you have come down.

Mr. O'BRIEN. It was my honor.

Senator HART. We will recess until 2:30 p.m.

(Whereupon, at 1:40 p.m., the hearing was recessed, to reconvene at 2:30 p.m., this same day.)

#### AFTERNOON SESSION

Senator HART. The committee will be in order.

We resume our hearing this afternoon having as our first witness the president of Aetna, Mr. Frederick D. Watkins.

Mr. Watkins, welcome.

#### STATEMENT OF FREDERICK D. WATKINS, PRESIDENT, AETNA INSURANCE CO., HARTFORD, CONN.

Mr. WATKINS. Thank you, Senator.

To begin my testimony this afternoon I would like to present for your information a film that was produced by the Aetna Insurance Co. to respond to what we believe is a very urgent need in connection with no-fault insurance—an informed public.

We feel that there is a great void in public understanding of what the present automobile insurance system really is, and what we are trying to accomplish in advocating the no-fault principle.

This is a documentary film. It includes proponents and opponents of the no-fault concept. We feel that it does a good job and we intend to use it wherever we possibly can across the country to better inform the public. We are not trying to sell insurance with it. We are trying to inform people.

With your permission, sir; we will let it roll.

Senator HART. I would like very much to see it.

(Film presentation.)

Senator HART. As we go back on the record, Mr. Watkins, I am sorry that the record itself cannot carry the film which you have just shown. Whatever point of view one held with respect to no-fault, I think there would be agreement that the film presentation is a public service contribution of real significance, and I am delighted to have a chance to thank you and Aetna for doing it.

Mr. WATKINS. Thank you once again for your participation in it. I think you made a noble contribution to our film and the work we are attempting to accomplish.

Sir, would you like me to proceed with my statement?

Senator HART. Please.

Mr. WATKINS. Mr. Chairman, I am happy to have an opportunity to be here.

For clarification, I am Frederick D. Watkins, president, Aetna Insurance Co.

As your committee is all too well aware, automobile insurance today is sorely in need of reform. Investigations and hearings over the past 2 years, including those of congressional committees and the Department of Transportation, have documented the facts substantiating the failures of the present negligence system beyond any dispute.

Because the need for reform is no longer the critical issue at these hearings, I would like to restrict my comments today to what I consider central questions before this committee: What type of reform should be enacted and whether it should be a matter for State or Federal initiative. What shape should reform take and how should it be implemented?

My own company's position is clear. Aetna endorses any plan that would introduce the no-fault concept of automobile insurance in either a pure or a modified form. We believe that the primary responsibility for this reform lies with the governments of the individual States. Thus, we support the recommendations of the Department of Transportation for State action guided by national goals.

Our approach is a pragmatic one in that we believe it is warranted both by the present situation and by the potential advantages of the no-fault reform initiated at the State level.

Let me elaborate.

Over 5 years ago my company advocated a first-party compensatory system of automobile insurance patterned after workmen's compensation to replace the existing tort liability system.

It was our belief then, as it is now, that the majority of ills associated with the present system revolve around the necessity of determining fault, case-by-case, in millions of traffic accidents each year.

This time-consuming and expensive process restricts our ability to serve the public and to assist and protect the injured accident victim.

For this reason we advocate reform that would enable us to promptly pay an individual insurance benefits on the basis of his economic losses rather than on the basis of his fault or nonfault in an accident.

Most of the proposals being considered in the States and at the Federal level are based on this no-fault principle. This includes the most prominent plans developed by Professors Keeton and O'Connell, the American Insurance Association, the New York State Department of Insurance—your own, sir—and most recently the recommendation of the Department of Transportation.

As far as the basic insurance concepts are concerned, these proposals and their numerous derivations differ more in degree and in detail than in substance. All would provide for first-party benefits to accident victims, regardless of fault, covering medical and rehabilitation costs, wage loss, and miscellaneous expenses. The compensation would be paid promptly on a period basis.

To the extent that losses could be recovered on a no-fault basis—under some of the plans there are limits established—individuals in an accident would not be permitted to sue each other.

The concept has obvious merits. Most importantly, it would compensate all accident victims promptly according to their actual economic losses. Secondly, by eliminating much of the legal and investigative costs of the present system, it would reduce rates for the consumer and return a greater percentage of the premium dollar to the accident victim.

No-fault would also encourage a more balanced approach to traffic safety by restoring the proper role of the law enforcement bodies in dealing with criminal drivers rather than attempting to impose this responsibility upon the insurance system.

There is no universal agreement on the merits of no-fault, however. Some critics have referred to no-fault as a "victim tax," which in effect would take benefits away from the innocent in order to pay the guilty.

In truth, no-fault would guarantee fair compensation to all parties in an accident. Not even the innocent victim can be sure of as much under the present liability system.

I might add that no-fault, whatever the specific plan, should not be a straitjacket on the insured individual, any more than minimum liability coverages are today.

Individuals should certainly have the option to purchase coverages to suit their particular needs and wants. But the important thing is that no-fault would provide a basic level of compensation for everyone involved in automobile accidents instead of ignoring a significant number of victims.

Many opponents are particularly dismayed by no-fault's renunciation of the common law concept of tort action in accident cases. I would like to read you part of what I consider to be a persuasive answer to these critics:

In the days of manual labor . . . and the stagecoach, there was no such problem, or if there was, it was almost negligible. Accidents there were in those days, and distressing ones; but they were relatively few and the employee who exercised any reasonable degree of care was comparatively secure from injury.

There was no army of the injured and dying, with constantly swelling ranks, marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the wonderful material progress of our age, and this is what we shall have with us for many a day to come.

Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our greatness will still have to be paid in human blood and tears.

To speak of the common-law personal injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury, and the relatively small proportion of the sums recovered which comes to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty.

This passage was part of a decision written by Judge J. C. Winslow in *Borgnis v. Falk Company*, a case heard by the Wisconsin Supreme Court in 1911, 60 years ago.

Senator HART. One could only hope that anything we said would be as prophetic—what is it 60 years later—as what Judge Winslow said in that case that you excerpted. I have not seen this before.

Mr. WATKINS. It is considered a landmark case in workmen's compensation. As you point out, sir, its application today is obvious.

The insurance industry does not present a unified front either for or against no-fault, as you know. Some segments of the industry, including some insurance companies, are very outspoken against a first-party system. Other companies, including my own, have fully endorsed the concept.

What motivates our company to support no-fault?

Some people, notably the critics of no-fault, claim that insurance companies are pushing for this program in order to avoid paying large jury awards, to clean up on profits, and in general to exploit the consumer and the public. This is nonsense.

By any test, our business will stand or fall on the quality of service we render our customers—the insuring public. No-fault will help us meet this objective, not contradict it.

I personally believe that a no-fault system would have a favorable impact on the current crisis of insurance availability. Auto insurance is hard to get for a number of reasons, including restrictive rate regulation in many jurisdictions. But the problem goes deeper than this.

The fact is that the liability system itself makes it necessary for insurers to try to identify and insure only the best drivers—those likely to escape accident involvement—in order to avoid the unpredictable costs of accidents involving unknown third parties and their automobiles.

This effort is inevitably frustrating, I might add. But the result is that drivers in certain categories in certain locations find it virtually impossible to obtain auto insurance coverage on the open market. Thus they are forced into assigned risk plans.

I feel certain that a no-fault system would lead to expansion of the automobile insurance market. Underwriting standards would be significantly changed.

An individual's driving record would still be important, but so would his income, the size of his family, the kind of car he drives. These are predictable factors, with assignable values.

In short, insurers would be able to figure more accurately the costs of the risk they assume and, in a free and competitive marketplace, would be able to offer coverage to virtually all drivers.

I believe, and my company and its affiliates believe, no-fault reform would ultimately improve the situation not only for the public but for the insurance industry by making possible more reasonable and realistic pricing of our product.

Today, sharp fluctuations in losses make the insurer's position too precarious to tolerate premium levels predicted on narrow or nonexistent profit margins and require the application of long-range trend factors in the pricing computation.

Under a first-party system, based on largely determinable rather than wholly unknown exposures, we would be able to predict losses with a greater degree of accuracy. Thus we would be in a better position to develop adequate rates based on moderate but realistic profit margins, avoiding the violent swings that have characterized our business for the past 10 years or so.

In summary, both from the point of view of the public and the insurance industry, no-fault would be meaningful reform. I strongly believe this.

I also believe that no-fault would be best implemented at the State level by the State governments, and I hold this view for what I regard as a most cogent reason.

In developing the no-fault plan that will be most effective in practice, we can learn much from the natural process of experimentation that occurs among the various states.

While the no-fault concept itself may be a rallying point for most reformers, there is no consensus on the best type of plan.

Some plans would set tort action thresholds at one figure; some at another. Some plans would pay total actual wage loss; others would set monthly limits of \$750 or \$1,000 or a specified percentage of salary. Some plans would include property damages in addition to bodily injury; others would not.

Before the public, the insurers, and the legislators can reasonably determine the relative merits of each plan, we need to experiment, and this is most appropriately carried out at the State level.

There are additional reasons, I think, why reform should be at the State level. State governments are closer and potentially more responsive to the particular needs of their constituencies, and in the matter of automobile insurance these needs may vary considerably.

Cost of living, for example, particularly medical care costs, often differ greatly from State to State. Contrast New York State to Mississippi.

Finally, the experience developed by the States in their traditional role as regulators of insurance—including the immediate availability of professional staffs knowledgeable in insurance—could be put to good use in dealing with reform at the State level.

Despite my strong preference for State rather than Federal action, I want to make it clear that I am neither dismayed nor frightened in any way by the interest being given to auto insurance reform by the Federal Government. On the contrary, I am encouraged by it. I am encouraged because it brings the urgency of reform into sharper focus.

The activities of this committee, its counterpart in the House, and the Department of Transportation—these activities provide not only direction for the States but incentive for them to act positively and without delay.

Most importantly, Federal attention to the problem serves to alert the public. This is crucial. Ultimately public pressure will stir even the most recalcitrant State legislature to reform.

You may be interested in some recent events in my home State of Connecticut, which illustrates this point. This year the Connecticut legislature is considering no-fault for the second time. The first time was 2 years ago when my good friend William R. Cotter, then insurance commissioner and now our Representative from the First Congressional District, sponsored an unsuccessful drive to have a no-fault plan adopted.

This year, however, reformers were more optimistic. The major no-fault bill under consideration by the legislature has the backing of the State labor council and a large portion of the local insurance industry. In addition, the press has been very forthright in its support of the no fault.

In spite of this, the unanimous decision of the legislative committees considering the bill, a decision reached 3 weeks ago, was to appoint a study commission to report back to the legislature next year.

This was a blow to those of us who considered prompt action to be imperative, but with this massive opposition we were realistic enough to view the matter as virtually dead in the current session.

Now it appears that we underestimated the enthusiasm of both the press and the public for no-fault reform. Editorial writers have been very critical of the committee action and, as a result, today there is reason for some optimism. State Senator Lieberman, the sponsor of the bill, and his associates have secured the necessary votes to petition the bill out of committee.

Not too long ago capital experts in Connecticut were saying such an achievement would be a virtual miracle. Today we have that miracle. It is to the credit of Senator Lieberman and his own tenacity in fighting for reform. It is also evidence of the timeliness of the no-fault issue itself.

Although the outcome of the critical votes in both houses of the legislature still remains to be seen, at least for the time being, no-fault is alive once again in Connecticut.

I am convinced that public pressure for reform is the most powerful force behind no-fault auto insurance. This is suggested not only by events in Connecticut but by various studies which show that an informed public is overwhelmingly in favor of no-fault as an alternative to the present automobile liability system.

An informed public will support no-fault. But a public that does not understand the issues is a hindrance to reform. Results of a Gallup poll published recently dramatically illustrate the need for better public information.

In summary, the findings of this poll were as follows: Of the people interviewed on April 3 and 4, 1971 only 19 percent understood the basic features of no-fault. Of this total, however, support for no-fault was 4-to-1.

Clearly, it is extremely important that public concern be activated. I am confident that these hearings and those of the House committee will help to serve this purpose of public education.

As I said earlier, this was the reason that motivated us to produce this film and it is our firm corporate purpose to pursue in every way

we can this concept of no-fault. We think it is in our best interests, in the long run, because what is good for the consumer we feel will benefit us if it is to last.

Beyond this, sir, I would like to see this committee give its endorsement to the recommendations of the Department of Transportation, thus recognizing that the overall public interest would be best served by adoption of no-fault reform and its implementation at the State level.

Again, I thank you for the committee's invitation and this opportunity to present our views for your consideration.

Senator HART. It is that kind of thoughtful, and I think balanced testimony that is most useful to the committee. We appreciate your willingness to discuss it as you have. There is really great appeal in logic to your suggestion for waiting until we experiment at the State level.

Mr. WATKINS. Sir, may I—

Senator HART. If I had more confidence in the State action, I probably would be less hesitant to accept that as the prudent course. I do agree with you that the more people—all of us—come to understand what is involved the better. And understanding must include first an appraisal of what the system is that we have been living with. It is not surprising to me that only 19 percent of the people expressed an understanding of no-fault.

Was that the figure?

Mr. WATKINS. That is correct.

Senator HART. I am not sure many more would be able to say they understood what we have now. That is not critical of Aetna; I mean it is the nature of the animal. The broadest understanding possible is very desirable. And that film again will help.

If you advertise its showing in advance you will probably find included in the audience fellows like me who want to get up and explain why the no-fault feature is better, and you might find a trial lawyer there who might explain that the individual will be brutalized and who knows who else?

Mr. WATKINS. Mr. Sargent was there, but let me assure you, sir, that we paid no fees for participation in this film.

Senator HART. One point you make though about the present system. You say that among the arguments the critics make against no-fault is that it is a victim tax hurting the innocent and paying for the guilty and so on. You say it would, in truth, provide fair compensation to any and all parties in that accident. And then here is the point we ought not forget; not even the innocent victim can be sure of as much under the present liability system.

Mr. WATKINS. That is right.

Senator HART. We are going to have to run around the track a long time before they convince me that that statement is not correct.

Mr. WATKINS. We feel very sincerely that it is correct, sir. Unfortunately, in the present system, the public as a whole doesn't understand what we are insuring. We are insuring liability coverage for other people, legal liability. We owe our insured the obligation to protect him in that position as well as we can. We have no obligation to the third party, that is why it is called third-party liability insurance as you know, sir. But the average man and the public doesn't

understand that. He feels everybody should be compensated as is the case under workmen's compensation. And by public acceptance, if not by law, the automobile is such a social instrument now—in fact, every man has the inalienable right to drive an automobile—we feel that the only way this can be resolved is with a first-party system.

I have not been able to find, sir, a single instance in any of the States where a driver has lost his right to drive permanently, regardless of what he has done with his automobile. And the insurance system cannot be made the policemen of that type of a driver.

Senator HARR. On that very point, the difficulty of getting a driver, whose lack of responsibility has been demonstrated many times, off the road, I hope will be commented on by a witness tomorrow.

As happens periodically, both of our Detroit daily papers in the past have run series on this. You know, where there is a driver with an arm's length record who is still out on the road. And I think it was sparked by just a tragedy of a few weeks ago where a driver with that kind of a record jumped a lane on an expressway and wiped out a family.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Watkins, in your—

Senator HARR. Now, I am not suggesting that the Federal Government should take over the licensing of automobile drivers. We have problems enough. But referring now to the reliability of letting States experiment with no-fault, why do you think we should allow States which have been so wretched even in the simple matter of getting a nutty driver off the road guide the development of insurance reform?

Mr. WATKINS. That is true, sir; and I don't honestly believe that we will, within the course of a few years, have all 50 States adopting this type of legislation. My statement didn't mean to imply that I felt there should be a permanent moratorium on Federal action. I heartily endorse the concept of national guidelines. I think you have laid down some excellent guideposts in your proposed legislation.

But, I think that since it is new, the public would be much better served if we could try various experiments without having mandated one system countrywide at one fell swoop.

Over the long pull, in a few years, if individual States haven't acted, I think we should review the bidding and then Congress should probably enact legislation that would either force the States to adopt minimum programs or the Federal program would become the law in the noncomplying States. In other words, Congress would mandate the individual States because they have had ample opportunity. Then through the experimentation process the individual State would—could if it wanted to—amend or adopt regulations that would ride over the Federal law but they would never be permitted to fall below it. It is simply a matter of time, sir, I think.

Senator HARR. To what extent are you troubled by this suggestion that if all or most of the States did adopt no-fault but in a variety of patterns, that the complications resulting from simply the multiplicity of plans given the mobility of the driver of the car, would be a disservice to us all? How do you respond to that?

Mr. WATKINS. We have a similar circumstance right now. Massachusetts had its own—even before it adopted its no-fault plan Janu-

ary 1 of this year—compulsory insurance statute. A driver in Connecticut, whenever he got into Massachusetts, had a policy that automatically complied with the Massachusetts law. He was protected. And I think that during this experimentation process, policies would be issued to recognize these circumstances of the varying States.

If a man from Massachusetts, which has a no-fault law, were driving in, say Pennsylvania, where there isn't, and if there is an accident, he would be protected with whatever requirements might be in the Pennsylvania law, which of course would be basic third-party liability.

Senator HART. Thank you. Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Watkins, pursuing the matter of the guideline approach, it was reported in the *Washington Post* following the testimony of Secretary Volpe in the House, that he had modified his position as to what he meant by national goals, and was willing to accept somewhat more of a Federal guideline approach capable of building a floor and a certain degree of uniformity into a State-by-State approach.

I judge by your comments that were the Congress to act now, you would not be adverse to a guideline into which a State plan would have to fit.

Is that my understanding of your statement?

Mr. WATKINS. Well—

Mr. SUTCLIFFE. Or have I stated it too strongly?

Mr. WATKINS. I believe you stated it too strongly, Mr. Sutcliffe. I am not in sympathy with the concept of a Federal mandate.

Mr. SUTCLIFFE. You see there are degrees of mandation. As the Department of Transportation study shows there are one, two, or three possible stages of development of no-fault—mandatory first-party coverage of medical expenses, wage replacement, and property damage. Certain possible gradations of tort exemption coinciding with the policy set forth could also be prescribed. We could set out guidelines, that said within the next 3 years, 2 years, whatever the legislation established, each State should work toward or shall work toward this level, and then within that, of course, there would be alternative ways of reaching those stated objectives.

Would this satisfy the desire for the need to have experimentation on a State-by-State basis which is, I understand, the rationale for your approach on the State-by-State basis?

Mr. WATKINS. I understand your proposal to imply that Federal legislation will be required at the end of this period of—end of this moratorium; is that correct?

Mr. SUTCLIFFE. Well, I am not certain that the legislation would require this. What you could do, as has been done in some other situations, is come back and take another look at it to see what the compliance has been. As to whether or not you have to at the end of the 3-year period to mandate that planning in the States that had not acted depends upon the kind of standards that are adopted and how easy it would be to judge whether the State had met those standards.

Mr. WATKINS. If I may be permitted, Senator Hart, you have given a tremendous amount of personal attention to this development over the past several years, and I would not be uncomfortable if the Almighty could guarantee that such a guiding hand would be continued over the next several years in this development, but I am fearful

of legislation being adopted now which suddenly has a way of becoming set in concrete, because I am convinced that this is such a new approach, it is so novel we are going to have to change with the the concept virtually month by month, if not year by year as it develops:

And I just have an inborn fear of legislation becoming concrete and we would have to live with what's in existence and also with the possibility that it may become a political football. Now, if—

Senator HARR. Thanks for your compliment, but I am trying to figure out whether it's easier to get the Congress to go back after it's jumped or whether it's easier to go forward step by step. Depending on which way you want it to go, you think it works better the other way?

Mr. SUTCLIFFE. Let me, sir, ask you, as the president of an insurance company that does a great deal of business in interstate commerce, what the practical implications for your company and perhaps other noninsurance businesses would be if you set up different laboratories to launch different experiments to test certain tenets of a no-fault concept that you have endorsed today.

The first question is: How many different forms would your company have to formulate to comply with the various plans that would go into effect in different States?

Mr. WATKINS. Actually, we are in the paper business now. In nearly every State, there is some particular clause that is required to appear in the policy which requires overprinting. As you probably know, every time you run a piece of paper through the printing press even if it's to change two words, it's expensive. So we wouldn't be in any different posture than we are now.

Mr. SUTCLIFFE. But one of the advantages we are trying to seek with a change in the system is reduction in operating costs. Is it a significant reduction?

Mr. WATKINS. No. Our printing cost is infinitesimal. We would still have to keep statistics. We would want to, on a territory by territory basis, to validate this experimentation process that we are speaking of.

In fact, even if we did have a common program countrywide, I am sure the country would be divided into zones, population districts and so forth, and we would have the same statistical problems and requirements that we have now and I think it would be a problem. Yes, it would be a problem.

Mr. SUTCLIFFE. You mentioned validating the different experimentations. How do you evaluate experiments? We had explained this morning two different plans that are being touted as no-fault plans; one in the State of Massachusetts which has been passed, and another being proposed in the State of Illinois.

A person knowledgeable as to contents of those plans explained that they were entirely different. One, in his opinion, was not a no-fault plan. Although it expanded first-party coverage it certainly had a rather difficult tort overload. I guess one of the validations that we are trying to find is, will operating costs be reduced? Will consumers therefore save in premium dollars? At the same time, will they be given a great deal more protection by their insurance policy in terms of compensation over what they presently receive? Do you run the risk of having experiments launched that are designed to prove that what you are testing for won't work?

Mr. WATKINS. Validation doesn't necessarily mean that what is being tested is proven to be feasible and useful. In other words, you can validate a failure. Specifically, if the validation says that a particular plan is no good, get rid of it. That in my terminology is a validation.

Mr. SUTCLIFFE. What if it turns out to be very good for insurance companies and very bad in terms of the amount of dollars that the consumer puts into it.

Mr. WATKINS. We are in one of the most highly competitive businesses in the United States. Also one of the most regulated at the State level. But we are in a very violently competitive business.

Mr. SUTCLIFFE. But as to each jurisdiction, you are each playing the same rules. So that you know if it turns out to produce expanded profits to the insurance companies the competition will be, how do we get the most people in that jurisdiction, not as to how you design the plan that is most beneficial to consumers.

Mr. WATKINS. I think you are making the assumption, Mr. Sutcliffe, that all companies will charge the same rates. I don't contemplate that. I think they will be competitive on rates and that in itself will be a lid on these profits, that the automobile insurance companies may make and which we haven't made for, lo, too many years.

Mr. SUTCLIFFE. It is not profits but the amount of expenditure of consumer dollars necessary to reach the kind of protection we all want that I am talking about.

Mr. WATKINS. There are two areas of benefit to the consumer. One, the premium he pays; and the other, what is returned to him in benefits. If the premium dollars is reduced from \$100 to \$80, and the public gets back in benefits, not in collection costs—if I can use that term, instead of lawyer's fees—65 percent, they are a lot better off because right now they are getting something less than 40 percent; some show as little as 14 percent out of that \$100, or \$14 out of the \$100.

So I feel very sincerely, that competition between insurance companies, the different types of insurance companies because as you know we have agency companies, mutual companies, we have direct writers, mail-order companies, that don't even have local agents. That type of competition, I think, will certainly control the price of the product. Particularly in those States where we have a free-rating climate.

Mr. SUTCLIFFE. I don't want to belabor the point. But let me take your analogy of a plan that returns instead of 45 percent on the dollar, 65 percent. Now, that enables you with the same collection of premium dollars to offer more benefits to the consumer.

Mr. WATKINS. Yes.

Mr. SUTCLIFFE. What if you take that plan and put it in one State and take another plan, which returns only 50 percent in benefits to the consumer. You see, we have developing now in Massachusetts a no-fault plan which has some cost added onto it because of something labeled "interinsurer subrogation."

We have suggestions for a similar type of overlay in Illinois. If our objective is to utilize to the best extent possible premium dollars to maximize the benefits payable, and avoid economic waste, be it expressed in terms of economic waste for the consumer or in terms of eating up profits for industry, how much of the costs should the American public be willing to pay for the privilege of experimenting as you advocate?

Mr. WATKINS. Well, I don't think I can answer that question in the way you asked it. I don't think that there would be plans—a plan returning only 50 cents out of the premium dollar—I think would fall of its own weight.

Mr. SUTCLIFFE. What if it straightened out another problem, as perhaps the Massachusetts plan has done by taking bodily injury claims out of the picture in PD cases, thus correcting an unusual situation there.

Certainly an apparent improvement in the system has been realized. And the systems might be one that the people may be willing to live with even though it increases the efficiency of the system from 45 to only 50 percent?

Mr. WATKINS. Are you assuming that the people in the State of Massachusetts are going to want exactly the same thing that the people in Arizona do?

Mr. SUTCLIFFE. I guess I have to make that assumption. I have lived in too many parts of the country to think that the needs of people in various States are different.

If I am injured in the State of Washington, I will have the identical kinds of needs in terms of payment for hospitalization, rehabilitation, and wage replacements that I will have if I were injured in the District of Columbia.

Mr. WATKINS. Proportionately, yes.

Mr. SUTCLIFFE. I might have to pay a little different cost for the insurance. But my needs, I think, would be pretty much the same.

Mr. WATKINS. Let me explain that I don't feel this experimentation period should go on ad infinitum. I hope—I hope that's clear. So we are not talking about something that is of long duration that is going to be continued in perpetuity.

I think very honestly that the bare facets of the various programs are going to surface rather rapidly. And as they surface, I think they should be identified and as soon as it's proven that they are feasible, workable, that it's what the public wants and it does relieve the pressure on the court system, that it makes more prompt reimbursement of medical expenses, it particularly encourages rehabilitation.

I think this is one of the most critical objections to the present system the fact that rehabilitation is so frequently negated because the poor person doesn't have the funds to take advantage of the remedial medical assistance that would save the use of his arm.

Consequently, after 6 months, why, it's irretrievably lost. The use of it is. The wealthy person has the means to finance that rehabilitation.

Mr. SUTCLIFFE. Have you given any consideration to how you appropriately draw the tort exemption line, you or your company? Because if these hearings are not going to produce Federal legislation they may serve as a guide to States that will be considering these important issues.

Mr. WATKINS. I cannot answer that in the affirmative, no. We have not put it down on paper. We have some pretty strong feelings in broad principle.

Mr. SUTCLIFFE. For the record, then, could you, if and when they are committed to paper, provide them to the committee?

Mr. WATKINS. I certainly will. In a nutshell we are purists. We believe in a pure compensatory system without any thresholds. In

other words, we follow Senator Hart's proposal that there will be unlimited medical reimbursement for incurred expenses and rehabilitation expenses.

Mr. SUTCLIFFE. What do you do with the intangible loss or the general damage?

Mr. WATKINS. We don't feel—we feel that that is a burden on society. If a person is made whole through prompt rehabilitation, through reimbursement of his economic losses, that fulfills society's obligation. This is true of workmen's compensation.

I am not holding up all the workmen's compensation laws as the model either. But I think the theory of workmen's compensation, the bold theory of workmen's compensation applies.

Mr. SUTCLIFFE. Would your company consider selling a first party policy to the individual on an optional basis to cover an intangible loss?

Mr. WATKINS. At this point I don't think we would. We might if competition forced us to. Again, let me emphasize, we are in a very competitive business. If we did, I feel sure we would want to have that intangible damage very carefully defined and limited to a fraction or a multiple of some readily identifiable expense.

Mr. SUTCLIFFE. Mr. Watkins, for the record, could you provide this committee with an estimate of the kinds of manpower training costs your company would have to engage in with different plans and different States compared to a uniform national plan of automobile insurance compensation?

Mr. WATKINS. Manpower training for underwriting?

Mr. SUTCLIFFE. For selling. I imagine there would have to be some difference there, for educating underwriters, for educating claims adjusters—those costs that might have to be incurred in the home office and in the jurisdictions in which you are writing if you had to market insurance under different plans. If we need clarification as to what we are after here, these can be just guesstimates. If it is not a valid question, please say so.

Mr. WATKINS. It is valid in some respects and we will certainly be glad to comply with your request. But companies that deal through independent agents, as does my company, have no control over those agents.

Mr. SUTCLIFFE. But you do provide them with information?

Mr. WATKINS. We provide them with information, but they are independent and they pride themselves in following their own educational patterns and their own devices. We can lead them to the trough but we cannot make them think.

Mr. SUTCLIFFE. I am sure they all do that anyway.

Mr. WATKINS. However, the principal concern would be in the area of loss adjustments which, of course, there would be no problem because it is purely first-party reimbursement and in the underwriting process.

But we will comply with your request. Be glad to.

(The following information was subsequently received for the record:)

At the present time we are handling a multiplicity of insurance plans and programs in the fifty state jurisdictions. Our best intelligence is that the staff, supported by our centrally-located Training and Development Department, should be able to handle the development of state-by-state No-Fault automobile programs.

While we believe economies would accrue in the preparation of printed material, we are unable at this time to identify any significant reduction in manpower training costs.

Mr. SUTCLIFFE. Just one other question. I did not note in your discussion the impact the construction of vehicles in a manner that would make them less susceptible to damage, might have on the cost of insurance.

We have before this committee legislation to establish property loss reduction standards for motor vehicles. Does your company take a position on that legislation?

Mr. WATKINS. We do not have technical support for such a position, but we do heartily endorse the concept that vehicles should be rated by their damageability. Now, how this is going to be established is another matter.

Mr. SUTCLIFFE. Do you think minimum levels of property damage susceptibility should be established by the Government that would mandate auto manufacturers to build their vehicles to comply with those minimum specifications?

Mr. WATKINS. I think it is in order for the Federal Government to establish safety standards; yes, sir.

Mr. SUTCLIFFE. And property loss reduction standards, bumper legislation?

Mr. WATKINS. This is what I call safety. Here again I think it is like going back to our discussion of no-fault, I think that guidelines could well be adopted and then if, in the course of a few years, those guidelines are not adhered to, then, by gosh, let's put some whip into them.

Mr. SUTCLIFFE. Thank you.

I have no further questions, Senator.

Senator HART. On that last point, I note in your prepared statement you expressed the belief that no-fault would lead to an expansion of the automobile insurance market and that underwriting standards would be changed significantly. Then you say "An individual's driving record would still be important, but so would his income, the size of his family, the kind of car he drives."

I assumed when I read that that you did agree with the question that Mr. Sutcliffe suggested?

Mr. WATKINS. In the main I do, sir.

Senator HART. Thank you again, both for your testimony and for the film. I hope there is very broad distribution of it.

Mr. WATKINS. Thank you, sir. I appreciate the opportunity.

Senator HART. Next the vice president and manager of the American Mutual Insurance Alliance, Mr. Andre Maisonnier.

I think it was in another committee, but I remember pleasantly hearing your testimony then.

**STATEMENT OF ANDRE MAISONPIERRE, VICE PRESIDENT AND  
MANAGER, AMERICAN MUTUAL INSURANCE ALLIANCE, WASH-  
INGTON, D.C.**

Mr. MAISONPIERRE. Thank you very much, Mr. Chairman.

My name is Andre Maisonnier, and I am a vice president of the American Mutual Insurance Alliance. We are a voluntary association of more than 100 mutual insurance companies which provide auto-

mobile and other property-casualty coverages in all 50 States and the District of Columbia.

We appreciate the opportunity of presenting our views to the committee. Since our oral statement very briefly summarizes our full statement, we respectfully request that the full statement will be made a part of the record.

Senator HART. It will be made a part of the record along with the exhibits.

Mr. MAISONPIERRE. We believe that the excessive human and economic losses resulting from auto accidents can be dramatically reduced. To this end, we have developed a reform proposal called the guaranteed protection plan which deals with all of the major factors contributing to high insurance costs and consumer dissatisfaction. This is a comprehensive approach to the automobile problem—an approach which calls for responsible reform in the automobile reparations system, in vehicle design, in driver performance, and in traffic safety regulations.

#### AUTOMOBILE DESIGN—KEY TO MAJOR INSURANCE SAVINGS

Automobile damage has become the dominant factor pushing up the cost of automobile insurance. About two-thirds of the total premium paid for a typical package of automobile insurance goes for coverage paid for vehicle repair or replacement.

Moreover, the cost of the vehicle coverages is now rising at an accelerating rate, while the cost of the bodily injury coverage is slowing down.

Rate filings made in a number of States over the past few months called for increases in the vehicle damage coverages of 10 percent to 20 percent or more, while the bodily injury rates remained the same or required minimal increases.

Thus, reducing crash damage to cars is the single most urgent priority in the alliance's guaranteed protection plan for auto insurance reform.

In prior testimony before this committee Dr. William Haddon, Jr., president of the Insurance Institute for Highway Safety, laid a firm foundation for congressional action to stimulate auto manufacturers to recognize the impact which fragile car designs has had in increasing the transportation costs of the American consumer.

Dr. Haddon's testimony covered a number of misunderstood points about low-speed crash problems. Among those, the following need emphasis.

(1) There is no necessary conflict between the goals of protecting automobile occupants from injury and protecting the vehicle itself from costly damage in collisions.

(2) Preventing low-speed crash damage will not automatically mean car price increases.

(3) Rear end damage is nearly as common as front-end damage—hence, protection of the rear of the car is just as important as protection of the front of the car.

(4) Low-speed test crashes and insurance data show that the bulk of property damage is produced by minor crashes.

Results of crash tests on 1971 models clearly indicate that presently available technology to reduce automobile damageability continues to be ignored in the design and manufacturing of automobiles.

On the other hand, improvements in vehicle design already are helping to reduce crash injuries and to minimize the cost of the economically less significant bodily injury coverages. Similar dedication to reducing car fragility would go a long way toward actually reducing the cost of automobile insurance.

#### PROPOSED REFORMS IN THE AUTO REPARATIONS SYSTEM

The guaranteed protection plan also calls for major reforms in the auto reparations system. These reforms are designed to achieve a reasonable balance among three difficult and often contradictory goals:

1. To provide crash victims with prompt and fair compensation.
2. To encourage driver responsibility.
3. To keep overall costs at a reasonable level.

Our statement describes the plan in detail. Let me merely outline some of its proposals.

The plan would require that every private passenger automobile policy issued or delivered in the applicable State shall include as minimum benefits, payable regardless of fault:

1. Medical and hospital expense coverage up to \$2,00 a person.
2. Disability income coverage of 85 percent of gross income lost during a period commencing 30 days after the accident.

Insurance companies would, of course, be permitted to offer broader coverages than the statutory minimums.

The guaranteed protection plan would retain existing liability protection. Persons with losses exceeding their first-party, no-fault benefits would be entitled to compensation from the other driver for such losses. But insurance companies which pay the medical and disability benefits to their own policyholders could seek reimbursement from the party at fault or his company.

Thus, the proposed system would be no-fault in the sense that the accident victim would collect for his basic economic losses, regardless of who caused the accident. But it would be a fault system in the sense that it would preserve the principle of personal accountability.

In order to simplify the payment of both fault and no-fault benefits, the plan calls for the compulsory arbitration of all liability claims under \$3,000 and an intercompany arbitration system to handle all subrogation matters.

The guaranteed protection plan sets an objective standard for determining general damages—those damages which go beyond the accident victim's out-of-pocket economic losses.

Payment for these damages would be limited to a proportion of medical and hospital expenses incurred. Such limits are intended to curb nuisance claims and to offset the cost of extending the basic no-fault benefits to accident victims generally.

These limits do not apply in cases involving death, permanent disfigurement, dismemberment, permanent impairment, and in other exceptional circumstances where the court or jury finds such a limitation to be unjust.

In addition, the plan would require the adoption by the States of comparative negligence laws. To the extent that the operation of the contributory negligence rules sometimes produce a harsh, unjust re-

sult in individual cases, the proposed reform would eliminate these inequities.

To reduce excessive attorney fees our plan calls for placing a limitation of 25 percent on such fees where they are contingent on the amount awarded the person represented by the attorney.

To protect car owners against unwarranted cancellations of their auto insurance the guaranteed protection plan calls for passage of legislation limiting permissible reasons for cancellation of private passenger auto insurance policies to nonpayment of premium or suspension of driver's license or vehicle registrations.

In addition, specific requirements with respect to the insurer's intention to cancel or not renew are provided in the plan.

#### GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH DOT RECOMMENDATIONS

There are many points of similarity between the insurance reform portion of the guaranteed protection plan and the program recommended by the Department of Transportation. There are, also, some basic differences between the two approaches. Let me briefly outline these for you.

We agree with Secretary Volpe that the States should move promptly to experiment with reform plans extending to auto accident victims—on a first-party, contractual basis—basic benefits to be paid to all accident victims without regard to fault.

The benefits paid under the guaranteed protection plan would cover in full the wage and medical losses incurred in more than 95 percent of all auto crashes.

The alliance proposal is consistent with the Secretary's suggestion that the States might want to experiment initially with the reform plan that would offset the cost of first-party coverages by the savings achieved in revising the rules on general damages.

Under our plan, such cost savings would be produced by imposing limits on the amount of general damages that could be collected for injuries not involving death, disfigurement, or permanent impairment.

We specifically endorse the administration's findings that the Federal assumption of the regulation of the automobile insurance business is highly undesirable.

Our differences with Mr. Volpe have to do primarily with matters of timing, and of defining what constitutes radical, irreversible change.

Mr. Volpe argues persuasively in his testimony that there is an urgent need for experimentation at the State level to clear up major uncertainties about the cost, workability, and public acceptance of any new system.

Having established that major uncertainties exist, very little credibility can be given to the DOT's proposal since it goes beyond the point of no return in the first stage of implementation.

We believe that the guaranteed protection plan offers crash victims better benefits and would allow for a more orderly testing of public sentiment than the Administration's program.

The people affected by changes in the reparations system need to be able to see and make judgments about what they would gain and lose as the balance is shifted towards greater use of no-fault coverages.

**GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH MOTOR VEHICLE  
INFORMATION ACT**

For the past few years the alliance has supported State legislation bumpers. We believe, however, that minimum Federal standards in this area would be desirable. Accordingly, we strongly endorse Federal legislation which would give the Department of Transportation authority to issue standards aimed at making cars more crashworthy.

We question, however, the desirability of section 5(c) of S. 976. We find it very difficult to understand delaying action until 1975. Each year's delay in enacting adequate standards penalizes the insurance cost for a whole generation.

Since the average life of a car is about 10 years, it would not be until 1985 that all cars on the road would be equipped with adequate bumpers if this section is allowed to stand as it is.

We believe that there is every expectation that the Congress should require a total vehicle design capable of withstanding rear and front impacts at 5 miles per hour into a solid barrier by 1973. Unless this is done, the Federal law will invalidate stronger State laws already on the books in Florida and Maryland and will give auto manufacturers a 2½-year umbrella during which time they need do nothing about providing adequate bumpers and more damage resistant car designs.

We support the requirement that auto manufacturers test their new models for crash resistance and publish the data so that potential purchasers can use this information in their buying decisions. This would encourage insurers to rate the various makes and models on the basis of their damageability and ease of repair.

We urge the enactment of legislation calling for periodic inspection and reinspection of damaged vehicles. The finds of the recently released California Highway Patrol's investigation of fatal single-car crashes makes such inspections imperative.

The reinspection of automobiles following crashes may bring about some additional insurance cost, since insurers will not be entirely successful in sorting out the maintenance repairs from the crash damage. However, we feel that such costs would be justified by the ensuing increase in safety.

We also support the uniform title registration program covered under title V of the bill. Over the years we have urged the States to adopt the auto title registration program of the National Committee on Uniform Traffic Laws and Ordinances.

Statistics clearly indicate that in States which have adopted this program, fewer automobiles are stolen and more stolen cars are recovered. Obviously, a substantial reduction in thefts or a substantial increase in the recovery rate would be reflected by a reduction in premium rates for theft insurance.

We want to stress our basic endorsement of the purpose of S. 976. Although our specific objections are substantive, we believe that with suitable amendments this bill can be of major assistance in bringing under control the excessively high price now paid by consumers for auto crashes and for the insurance coverages they pay for crash damage.

**GUARANTEED PROTECTION PLAN; COMPATIBILITY WITH CONSUMER  
ATTITUDES**

One of the major considerations involved in assessing the practical and political feasibility of any new automobile reparations system is public acceptability.

In designing the guaranteed protection plan, the Alliance has conducted major research on public attitudes and has tailored its various proposals accordingly. All of the available evidence indicates that the American public attaches considerable importance to the concept of driver responsibility for injury done another.

This was demonstrated in a major national study of the attitudes and feelings of people who buy auto insurance, conducted by Market Facts, Inc., largest consumer survey organization in the Nation. The survey is described in detail in our prepared statement. Let me just cite a few of the pertinent findings.

1. Auto accident victims who have been injured by a negligent driver are unwilling to give up the legal right to collect for general damages.

2. Six out of ten consumers are opposed to pure no-fault auto insurance. Among those who have had experience with the existing claim payments system, almost two out of three were opposed.

3. About two-thirds of the consumers interviewed felt that making automobile insurance excess over other benefits would not be too good an idea.

In addition to this public attitude survey, the Alliance conducted an actual field experiment over a 12-month period in the Syracuse-Rochester areas of New York and in several counties on the western edge of Chicago.

The objective was to test injured claimants' receptivity to a program guaranteeing them prompt but reduced benefits.

The 16 participating companies, representing a broad section of the auto insurance business, offered third-party bodily injury liability claimants a choice of collecting all of their medical expenses up to \$5,000, plus wage benefits equal to 105 percent of their losses, to be paid promptly as their losses accrued. Or they could reject this alternative and pursue a regular liability claim.

The major finding of this experiment was that, given a choice between a guaranteed offer and the payment available under the existing auto liability system, only 25 percent of the eligible claimants elected to accept the alternative benefits in Illinois, and 15 percent in New York.

Confirming this apparent public attachment to the present liability system is the response found to a question in DOT's own public opinion survey. The question was: "In your opinion, is there a need to change the system? In what ways?"

More than two-thirds—78 percent of all respondents—did not express a preference that the system be changed. See pages 6 of exhibit 3.

**UNIFORM MOTOR VEHICLE INSURANCE ACT**

One of the important shortcomings of this proposal is its incompleteness. The bill leaves many questions unanswered. The public is not being well served by being left in the dark by these unresolved issues.

There is wide appeal to a plan which seemingly offers something for everybody with no controversy. But, it is the responsibility of this committee not only to examine these promises but also to examine the unresolved problems created by the proposal.

For instance, what rates would be charged for the compulsory coverages? What additional coverages would be needed and what would they cost? What cost would have to be paid out of the pockets of accident victims and which claims would not be paid under the proposed new form of insurance?

We know that 55 percent of the persons injured in auto crashes are not wage earners at the time of the accident. Many of these persons expect to enter or reenter the work force at some future date.

Under the Uniform Motor Vehicle Insurance Act these people would have no way to collect for any harmful effects an auto injury might have on future earning capabilities unless they sustain catastrophic harm. This inequity is even more severe in the case of the unemployed.

The bill does not state how disability is to be defined. Nor how the extent and duration of this disability is to be measured. And, what is meant by "disfigurement"?

The bill will fall far short of its sponsors' expectation of providing "almost total compensation" for the seriously injured. Although the bill preserves the right of total recovery for those who are more than 70 percent disabled, this remedy is made largely meaningless by other provisions of the bill which would prohibit the States from requiring drivers to carry any form of liability insurance to pay for such losses.

Additionally, the bill creates serious inequity for the much larger group of seriously injured crash victims who suffer permanent disabilities below the 70 percent level. These victims would receive no compensation at all for going through life with some rather serious impairments.

It is argued that general damages should be excluded from compensation because they are subjective in nature and are not susceptible of precise measurement in dollars. Yet the same thing is true of a great many things in this world.

What is a man's time worth, and how is its value determined? How do we determine the value of a piece of real estate condemned for a highway?

All these things are subjective in nature. Yet we manage to translate them into dollar amounts by the process of bargaining and compromise.

In fact, under the Uniform Motor Vehicle Insurance Act, very large numbers of auto accident victims would receive nothing at all even from the compulsory personal injury coverages. Nobody would collect for damages inflicted on his automobile under the statutory coverages. Many of those who have wage continuation plans, health insurance protection, et cetera, would not collect anything for their wage and medical losses, either.

No doubt it will be argued that these losses are covered by other benefit systems. But the same argument can be made today.

The point is, both the present statutory auto insurance coverages and those proposed under this Federal bill are designed deliberately to leave out certain categories of claimants. And the group left out is

much larger under the Federal proposal than under the present system or under the guaranteed protection plan.

Another unfortunate shortcoming of the Uniform Motor Vehicle Insurance Act is the damage it would do to one of the Nation's major industries by abolishing State regulation of insurance and superimposing a system of Federal regulation under the Secretary of Transportation.

There is nothing in the history of the Federal regulatory system to instill confidence that the Federal regulation of insurance would be, on the whole, more efficient than the present State regulatory system.

The *Congressional Record* is full of official and unofficial criticism of Federal regulatory agencies for dilatory procedures, their inflexibility, their lack of independence and competency.

Insurance remains one of the most diverse businesses in the Nation. In most respects it is still a local business, built on local bases and solving local needs. The alliance believes that the regulation of insurance must recognize and respond to this diversity.

One of the politically popular features of the Uniform Motor Vehicle Protection Act is the provision which would require auto insurers to accept all applicants for coverage, provided they have a valid driver's license and are willing to pay the premiums.

The most likely result of this would be to increase the cost of insurance for a vast majority of drivers who now enjoy preferred rates, since companies which attempt to set their rates at a lower level to attract such drivers would be inundated by high-risk drivers.

The guaranteed protection plan deals with the problem of insurance availability in a more reasonable fashion. It calls for an expansion of the present automobile insurance plans so as to guarantee reasonable limits of protection for both liability and auto insurance coverages to every licensed driver.

#### CONCLUSION

The problems generated by automobile crashes are far more complex than was generally realized when the reform issue first came to the general public's notice.

We believe that the ensuing research, debate, and soul searching has been productive, and has produced something close to a consensus on the steps that must now be taken to bring about a reformed system and to bring under control the excessive losses.

The alliance has been privileged to play a major role in the search for reform. We pledge to you and to the public our sincere efforts to accomplish these objectives.

This, Mr. Chairman, completes my oral statement.

Senator HART. Thank you very much, particularly for the skill you used in summarizing a very long and useful paper.

I would want to comment about that bumper standard section of S. 976. We will want to take a look at that language, I agree with you. Whether it prevents anybody establishing the standards before the date required, January 1975, it was not intended to do so.

Mr. MAISONPIERRE. That is right, sir.

Senator HART. You cite public opinion surveys to establish the proposition that with respect to the elimination of pain and suffering

informed citizens say no, don't eliminate it. You suggest that we should respond to that wish. Then, you say just because it is politically popular to prohibit cancellation or to compel writing we shouldn't necessarily follow what is popular.

Mr. MAISONPIERRE. I would like to answer this if I may.

We believe that this program which I stated to be politically attractive is politically attractive because many individuals who have supported this proposition do not really understand the far-reaching consequences that such a proposal might have. Once this is explained to them, once the straitjacket to which the industry is really placed under a proposal of this nature is explained to many of the supporters of this proposal, there is, then, a realization that perhaps its attractiveness is superficial and doesn't go to the depth of the problem.

Senator HART. You have helped us before and I am sure when we have an opportunity to inhale the full paper, we will find there is much that is helpful.

Mr. MAISONPIERRE. I apologize for the length, Senator.

Senator HART. No, it will be very helpful. We are today where we were when we last visited, trying to figure out a better delivery system. We now use the figure \$14 billion a year in premiums with economic losses substantially greater than the total benefits that are paid out. We are meeting again to discuss how we can better provide for the public with insurance benefits and understand the existing system.

Mr. MAISONPIERRE. This is right, sir. We have been studying this over a period of years, and this program I described to you, the guaranteed protection plan, we believe will bring about a better distribution of the benefit system, will certainly bring about substantially greater reimbursement for economic losses for accident victims; we expect it will bring about a substantial diminution in the benefits paid where we think that there is abuse. This is in the so-called minor cases, and, of course, minor is relative, and we believe the program, by bringing about certainty of recovery for all accident victims, by reducing the payout in the small cases, hence also reducing the attractiveness of pursuing lawsuits in the small case, will bring about a better distribution of the benefits.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator.

Mr. Maisonpierre, in your testimony on automobile design as a key to major insurance savings, I understand that you endorse S. 976, particularly in its authorizing the Department of Transportation to set property loss reduction standards. Is that correct?

Mr. MAISONPIERRE. This is right.

Mr. SUTCLIFFE. I understand that you ask the committee to look very closely at the preemption provisions that would be included in any such legislation.

Mr. MAISONPIERRE. Yes. I am very concerned, Mr. Sutcliffe, and if I may, I would like to indicate that we support very strongly the Maryland bill.

Mr. SUTCLIFFE. This is the Maryland bumper bill?

Mr. MAISONPIERRE. The Maryland bumper bill.

Mr. SUTCLIFFE. This was a 5 mile per hour front and rear standard?

Mr. MAISONPIERRE. To be effective January 1, 1974. The bill went through the legislation and it is now before the Governor. The Gover-

nor is holding hearings tomorrow, I believe, to see whether or not the bill should be vetoed.

There is the argument that the latest bumper standards issued by the DOT have in fact already preempted any State action in this area and hence the Governor should veto the bill.

Mr. SUTCLIFFE. Were those bumper standards of the Department of Transportation based upon the authority to develop motor vehicle safety standards?

Mr. MAISONPIERRE. That is right.

Mr. SUTCLIFFE. As distinguished from property loss reduction standards?

Mr. MAISONPIERRE. That is right. The argument is being made even though the purpose of the two standards really are different, the one is aimed at safety, the other at damageability, these purposes are different. The argument is being made that the standard issued by DOT about 3 weeks ago have already preempted all State action in this area.

We will appear before the Governor strongly supporting the point that there is no preemption. We do not believe there is such a preemption.

Mr. SUTCLIFFE. As to the diagnostic inspection requirements in S. 976, do I understand you to favor those as incorporated in the bill?

Mr. MAISONPIERRE. We believe that these are very, very important, Mr. Sutcliffe. In fact, Senator Hart, we appeared before you about 2 years ago when we talked in terms of postaccident inspection and reinspection. At that time we opposed a Federal provision or any provision requiring the reinspection of automobiles after accidents. We opposed this on the basis that we did not think that the reinspection programs or the inspection programs pursued by the States were sufficiently sophisticated to support the cost of reinspection after crashes.

However, this program which is described in S. 976 gives us the confidence that the reinspection program will be very much more thorough and will bring about the type of improved automobile safety which is needed on the highway. But, we think for this to come about, we need to have the inspection mechanism which you have described, Mr. Sutcliffe.

Mr. SUTCLIFFE. The diagnostic inspection?

Mr. MAISONPIERRE. Yes.

Mr. SUTCLIFFE. As you understand it, would this require construction of vehicles to be susceptible to diagnostic inspection?

Mr. MAISONPIERRE. Yes. It will require both. The vehicles must be properly equipped so that the centers can get the information adequately.

Mr. SUTCLIFFE. What impact would the uniform titling provisions in S. 976 which you also endorse have upon insurance cost?

Mr. MAISONPIERRE. Well, the two major States which have not adopted the uniform title and registration law are New York and Massachusetts. Those are two States which have a huge amount of vehicles, two States where both the rate of theft is high, very high, much higher than nationwide, and the rate of recovery much lower than nationwide. Obviously, the impact will be felt primarily in those two States—New York and Massachusetts.

To the extent that we are going to be able to reduce insurance losses, theft losses, we are going to be reducing the impact on auto insurance cost. I cannot give you any exact figures, but automobile theft in both States have had serious impact on the automobile insurance rates in those States.

Mr. SUTCLIFFE. Have estimates been made of the amount of insurance payout for those States and, if so, could you provide them for the record?

Mr. MAISONPIERRE. I would like to provide this for the record.

(The following information was subsequently received for the record:)

AMOUNT OF INSURANCE PAYOUT IN NEW YORK AND MASSACHUSETTS  
RELATED TO AUTOMOBILE THEFT

The amounts of insurance benefits paid out in those two states for the calendar year 1969 (latest available figures) are as follows:

	<i>Millions</i>
New York -----	\$89
Massachusetts -----	17

Mr. SUTCLIFFE. Mr. Maisonpierre with regard to point about automobile design keyed to major insurance savings—how is this committee to be assured that savings that may result from better bumpers and for proper inspection and for uniform titling will be passed on to the consumer and not retained by insurance companies?

Mr. MAISONPIERRE. Perhaps, Mr. Sutcliffe, if I may, I would like to bring some specific examples of what is presently going on. As my statement indicates, we feel that we are reaching a payoff in the safety standards. We are convinced that the standards have had strong impact on reducing both the number and the severity of accidents on the highway.

Let me introduce some rate filings which have been approved in a number of States as they relate to the bodily injury liability rates which are of course affected by the safety standards and the property damage liability rates which, of course, are unaffected by Federal standards.

In the State of Illinois there was no change in the bodily injury liability rates and there was a 13.9 percent increase in the property damage liability rate.

Idaho had a 13.6 percent decrease in bodily injury liability rate and a 19.9 percent increase in property damage liability rate.

Nebraska had a 2.3 percent increase in bodily injury liability rate and a 32.5 percent increase in property damage liability rate.

New Jersey had 0.1 percent in bodily injury liability, and a 23.6 percent increase in property damage liability.

South Carolina had a 3.5 percent increase in bodily injury and a 34.7 percent increase property damage liability.

Maine had a 4.1 percent increase in bodily injury liability rates and a 32.9 percent increase in property damage liability rates.

I think that this indicates that where there are ways to either reduce or control the cost of insurance to the public these costs are passed on to the public.

On the other hand, when we are at this stage in no position to control the cost because the damageability of cars, the public is just paying horrendously for this lack of control.

**Mr. SUTCLIFFE.** So, your suggestion is the rating system of the several States would factor in any savings resulting from property loss reduction standards when determining rates for insurance companies?

**Mr. MAISONPIERRE.** That is right.

**Mr. SUTCLIFFE.** And this would be perhaps established under the auspices of the National Association of Insurance Commissioners as a standard operating procedure in rate filings?

**Mr. MAISONPIERRE.** Yes, this is right. In fact, this is what is really happening today.

**Mr. SUTCLIFFE.** I understand the figures that you have read and I understand the point you make.

Another interpretation of those figures, however, on the basis of the Department of Transportation's study would be that we are continuing to take better care of our cars than we are the bodily injury claimants. In other words, the rate reductions or the failure to achieve justified rate increases was on the basis that the payout in the bodily injury area was constricted.

Although I do appreciate those figures and realize what you are trying to represent by them, I must be somewhat suspect as to whether or not that the reason for the maintenance of the rate or the lowering of the rate was the one you ascribe.

**Mr. MAISONPIERRE.** If I can address myself to this, in those States which I have mentioned to you there has been no appreciable change in the law except perhaps Illinois and Maine which comes to mind where we have come to a comparative negligence system. So, we have broadened the opportunity for paying accident victims. Yet, we know that the periods covered by these rates are the periods which have witnessed the fastest rise in medical care in the history of our Nation.

So, the ingredients that make up these bodily injury liability rates have gone up at a rate higher than ever before, and yet the rates have remained fairly stable, or as in Idaho, I stated 16.9 percent decrease. There has been no change in the law to decrease the amounts of benefits or economic loss reimbursement to the injured people.

**Mr. SUTCLIFFE.** I think the only thing I was suggesting was that the payout experience could result from the fact that, you are not having as many losses because of improved safety features on highways, or, the claims are on the increase but payment for those claims is not being made. That is the only point I wish to make.

I recognize that all costs in terms of attorney's fees, doctor's expenses, adjustments—all service costs—are dramatically on the rise and are not susceptible to any kind of technological advance. I just want the record to suggest that there may be more than one cause for the situation which you describe.

**Mr. MAISONPIERRE.** We do know that any way you measure it, the number of fatalities last year has gone down, and this I think is a measure of the number of serious bodily injury accidents caused; and this number, I think, reflect the number of bodily injury claims which are received.

**Mr. SUTCLIFFE.** That was even true, was it not, with an increase in the number of vehicles on the road and miles driven?

**Mr. MAISONPIERRE.** Yes, this was the first year I believe over a long period of time that there was an actual reduction in the number of

fatalities in spite of the fact that we have had an increase in the number of cars, and so forth.

Mr. SUTCLIFFE. Mr. Maisonpierre, as to your guaranteed protection plan and the proposals to reform the reparations system, could you provide us with the percentage of injured accident victims that you have calculated would be covered by the basic benefits provided in your plan?

Mr. MAISONPIERRE. Yes, I would be glad to do this.

(The following information was subsequently received for the record:)

PERCENTAGE OF INJURED ACCIDENT VICTIMS WHO WOULD BE COVERED BY THE BASIC BENEFITS PROVIDED IN THE GUARANTEED PROTECTION PLAN

The Guaranteed Protection Plan would require that every private passenger automobile insurance policy contain at least \$2,000 in medical coverage and at least \$6,000 in disability income coverage.

Table IV-2, Department of Transportation's Automobile Personal Injury Claims Study, indicates that 98.5% of all accident victims suffer economic losses of \$5,000 or less, and 99.6% of accident victims sustain economic losses of \$10,000 or less. Thus, a program paying \$8,000 economic loss benefits would cover in full the economic losses of more than 99% of all accident victims.

COMPARISON OF THE GUARANTEED PROTECTION PLAN WITH THE PRESENT SYSTEM

When attempting to project the cost of any new reparation system, the following points must be emphasized:

1. *It is impossible to quantify the effects which changes in reparation systems are likely to have on losses*

As we have already indicated, the present reparation system, through the insurance mechanism, plays an important role in reducing the total losses arising out of the operation of automobiles. Although this loss reduction has never been quantified, it nevertheless exists. One can only assume that the impact of this loss reduction mechanism will diminish as the reparation system moves away from fault.

However, the major impact of changing the reparation system on society consists of redistribution of who will bear what losses. S.945 would, for the most part, require that those who have suffered losses will pay a greater share of the total incurred automobile accident losses. The present system and the Guaranteed Protection Plan, on the other hand, would continue to bear down hardest on those who have caused the losses, on the theory that the system should recognize as a matter of equity that the good drivers should not subsidize those who abuse the privilege of driving.

Additionally, it should be noted that reduction of automobile insurance premium costs does not necessarily reflect a reduction in the total incurred losses nor a net reduction of cost for individual car owners. Automobile insurance premium costs can be reduced by increasing the amount of self insurance which car owners or injured are required to absorb. Thus, a reparation system which contains many benefit gaps may, at first blush, appear to the automobile owner to be a cost saving in that his premium will be lower. But, when that same owner is involved in an accident and has to dip into his savings to cover his losses because of inadequate insurance coverage, the reparation system, will in fact, have turned out to be much more costly to him.

Each of the reparation systems which have been proposed to date would pay for the losses arising out of automobile accidents through a mixture of automobile insurance, insurance other than automobile, such as health, social security, etc., and self insurance. The Guaranteed Protection Plan attempts to minimize the dependency on self insurance and other insurance systems. It seeks to internalize the cost of automobile accidents by incorporating the loss components within auto insurance. This is, of course, highly desirable so that by pinpointing the cost of accidents, society can make informed decisions on how to best structure the transportation system. S. 945, on the other hand, externalizes many if the costs associated with auto accidents by passing on those costs to other insurance systems and

by requiring victims of accidents to self insure substantial portions of their losses. Thus, superficially it might appear as though S. 945 "costs less", when in reality it redistributes automobile accident losses in a very unfair way—by asking those least able to pay for the losses, accident victims, to foot a much higher proportion of the losses.

**2. When pricing a new insurance system, people's behavior will vary depending on the insurance systems in force**

Because it is impossible to accurately predict behavioral pattern changes under different reparation systems, one invariably assumes that there will be no change when attempting to project costs of new systems. This is a false assumption. We know, for instance, that the cost predictions relating to both the federal Medicare and Medicaid programs were grossly understated because changes in people's behavior were not considered at the time the original cost projections were made. Obviously, the greater the departure from an existing insurance system, the greater the changes in society's behavioral patterns and the less dependable are cost projections.

The Guaranteed Protection Plan borrows a great deal from the past and one can assume that people's behavior under Guaranteed Protection will be fairly similar to their behavior under the present system. However, S. 945, and other such radical proposals, expose the public to entirely new reparation systems. One should expect that auto accident victims will resist being paid substantially reduced benefits and that much greater use of the insurance mechanism will be made than is anticipated by the planners of those new systems. This will, of course, frustrate attempts at reducing the cost of automobile insurance.

In spite of these costing difficulties, we have arrived at Cost-Benefit projections of the Guaranteed Protection Plan and we have compared those to the present system.

We believe that automobile insurance premiums for the year 1970, assuming all the states had enacted the Guaranteed Protection Plan, would have run to \$10.4 billion. This is compared to the present system's premium of \$12.9 billion, or a reduction of 19%.

As to the auto accident victims' net recoveries, in 1970, again assuming the enactment of the Guaranteed Protection Plan in all 50 states, this would have run to \$6.7 billion as compared to \$7.7 billion under the present system, or a reduction of 13%.

It should be noted that the Guaranteed Protection Plan would reduce consumers' automobile insurance premiums more than the losses paid to accident victims. This is the result of efficiently structuring Guaranteed Protection so to reduce company administrative expenses. In fact, Guaranteed Protection would decrease company expenses in the area of bodily injury insurance by nearly 10%.

The lower net recoveries under Guaranteed Protection, are due entirely to the fact that improved bumper assemblies capable of withstanding 5 mph front or rear collision without damage other than the expense of refinishing, will reduce both losses—hence, recoveries by 21% or \$850 million.

Comparing the Guaranteed Protection Plan with the present system, we believe that the following changes will likely occur if Guaranteed Protection is enacted in all 50 states:

A 21% reduction in insured vehicle damage ultimately when all cars have proper bumpers.

A four-fold increase in first-party benefits under bodily injury insurance.

More than 2% reduction in plaintiff-attorney fees.

A 1/2 reduction in total insurance company expenses and overhead for bodily injury insurance.

A 40% reduction in payments for pain and suffering.

Nearly a 20% increase in bodily injury payments for economic losses to those who are not recovering any benefits under the present system.

**Mr. SUTCLIFFE.** Do you have any rough estimate?

**Mr. MAISONPIERRE.** About 95 percent.

**Mr. SUTCLIFFE.** You point to the fact that driver responsibility would be retained. Is this through the tort mechanism?

**Mr. MAISONPIERRE.** It would be a combination of two ways. Basically, it would be a tort mechanism. Of course, the payment of the

first-party no-fault benefits would ultimately be assessed against the responsible driver through an intercompany arbitration procedure.

Mr. SUTCLIFFE. It would be assessed to the company insuring that driver; is that correct?

Mr. MAISONPIERRE. It would be assessed against him and against his class and against the individual in the long run.

Mr. SUTCLIFFE. The individual in the long run through the payment of premiums but not as to the particular instance?

Mr. MAISONPIERRE. That is right.

Mr. SUTCLIFFE. So in many respects it is parallel to the inter-insurer subrogation provisions of the Massachusetts no-fault law?

Mr. MAISONPIERRE. To a large degree it does, Mr. Sutcliffe.

Mr. SUTCLIFFE. Do you mandate arbitration?

Mr. MAISONPIERRE. We mandate arbitration, and if I can explain. What we are contemplating is an expansion of an arbitration system which the industry is already using very extensively in the property damage area. I can describe this, it will just take a second of the committee's time.

This is a program which is administered by the companies. In the property damage area it is voluntary to the extent that a company does not have to become a signatory to the arbitration procedure, but 500 companies have become signatories to the procedure and once they have become signatories they must then abide by the arbitration proceedings.

Approximately 157,000 cases are handled this way a year, with about 50-some odd million dollars in losses being exchanged every year. The cost to arbitrate such cases will vary from about \$3.50 to \$7.50 depending on the locality.

Mr. SUTCLIFFE. May I interrupt there and ask you whether or not in that arbitration the consumer, the policyholder is involved at all?

Mr. MAISONPIERRE. No, he is not. The arbitration is done for the most part, I would say 99 percent of the time, by a filing of the files. The files are filed with the arbitrators. Occasionally, in difficult cases there may be an appearance by a company representative.

Mr. SUTCLIFFE. But not the policyholder?

Mr. MAISONPIERRE. The policyholder is not involved.

Mr. SUTCLIFFE. Do you anticipate that that would be the procedure followed in the bodily injury claim?

Mr. MAISONPIERRE. Yes, we would.

Mr. SUTCLIFFE. You would not ask the consumer to appear?

Mr. MAISONPIERRE. No, we would not.

Mr. SUTCLIFFE. How would you notify the consumer that he was at fault then? Under the property damage situation, do you notify him that he was found to be at fault?

Mr. MAISONPIERRE. I cannot speak for all companies. I can only speak for two companies whose procedure I know. The companies will send a card to the insurer advising the insurer of the disposition of the claim.

Mr. SUTCLIFFE. That will include the fact that he had been found at fault?

Mr. MAISONPIERRE. I cannot say exactly whether it would.

Mr. SUTCLIFFE. For the record you might.

(The following information was subsequently received for the record:)

**PROCEDURES USED BY INSURERS NOTIFYING POLICYHOLDERS THAT A PROPERTY DAMAGE LIABILITY LOSS HAS BEEN PAID ON THEIR BEHALF**

The procedure varies extensively among companies. Some companies notify their policyholders of the payment of the loss, at the time of the payment of the loss and some do not.

However, the policyholder is always made aware of the payment of the loss at the time of receipt of the policy renewal notice and statement. This notice reflects the "chargeable accidents" which affect the policyholder's premium.

**STATUS OF INSOLVENCY CLAIMS IN ARIZONA AND CALIFORNIA**

The attached letter dated April 26, 1971, reports on the liquidation progress of the insolvent Key Insurance Exchange, California and the Liberty Universal Insurance Company's insolvency in Arizona.

**Mr. SUTCLIFFE.** The reason I think this is important for the record is you are calling this a way of retaining driver responsibility, and unless the driver is informed that he is found to be at fault and knows why he is found to be at fault, you can't even pretend that there is a deterrence value.

**Mr. MAISONPIERRE.** Of course, the driver knows whether or not he is at fault. It depends whether he recovers on his own car. If his car is damaged and he does not recover himself, he knows that he is at least at fault. It may not be an indication that the other party is at fault, but he is at some fault.

**Mr. SUTCLIFFE.** You mean neither party is oftentimes paid for their collision and then the companies go through a subrogation proceeding?

**Mr. MAISONPIERRE.** No, because whenever an arbitration proceeding has been handled, it also takes care of the individual's deductible. In other words, the company will collect a deductible for its own insureds and it will pay its insured the deductible back.

So, it is the mechanism through which the insured can collect his deductible.

**Mr. SUTCLIFFE.** I am simply trying to explore how driver responsibility is built into the interinsurer subrogation concept that you have presented us.

First of all, the DOT study is very skeptical of the ability to deter accidents through insurance, but even assuming that there is a class of people who can be deterred, I think it would be appropriate to ask how through a communication which would have to be made in the bodily injury situation, because you don't have the care there, the person is found to be at fault.

Do you understand that question?

**Mr. MAISONPIERRE.** Yes, I understand this. I would like to inject this one thing. The DOT report, if I remember correctly, said that it had not been able to measure the trend that the present system brings about greater highway responsibility and there is deterrence in the present system.

**Mr. SUTCLIFFE.** We will, for the record, include at this point, with the permission of the Senator, the appropriate language of the Department of Transportation report.

(The information follows:)

**EXCERPTS FROM THE DEPARTMENT OF TRANSPORTATION REPORT**

Unfortunately, the claim of a significant deterrent effect for the present automobile liability insurance system has so far proven unsusceptible to substantiation by empirical evidence. Nor does significant evidence exist to support the

common belief that most accidents are caused by improper and avoidable human error. Two investigations conducted during the course of the Department's study, however, indicate that most accidents are caused by environmental or personal factors which are external to the individual's conscious control and that punishment or its threat, therefore, is ineffective as a deterrent to deviant driving behavior.<sup>1</sup>

Analyzing the deterrent effects of various measures, including those of the tort liability system, one of these studies notes that existing deterrent measures fail to distinguish between two groups of drivers: those who are unwilling to conform to "normal" driving behavior and those who are willing but unable to conform.<sup>2</sup> The "won't conform" group consists of motorists who willfully choose to violate traffic laws—who are able to modify their "bad" driving, but do not do so. Included in this group are those individuals who by virtue of their membership in deviant subgroups, are more likely to conform to deviant norms than to conventional driving norms (for example, certain youthful operators). For these relatively few drivers who deliberately choose to ignore safe driving practices, the threat of punishment will not, by itself, motivate careful driving behavior.

Motorists falling in the "can't conform" group attempt to exercise reasonable care when driving but, at times, are unable to do so.

"Some drivers are chronically unable to perform adequately, and all drivers have occasional nondeliberate lapses from adequate performance. The new and inexperienced driver, for example, regardless of his intentions and attitudes, will inevitably make errors. . . . Some of these errors will undoubtedly result in citations and crashes (as the disproportionate crash involvement of young drivers would seem to indicate), but to assume that these can be eliminated by deterrents is to assume also that the new driver is capable of a level of performance which in fact he has not yet achieved."<sup>3</sup>

Mr. MAISONPIERRE. I would like to bring this out. There is a way which I think has been overlooked by many people.

Senator HART, I am sure you have heard of the woes and the complaints of the presidents of the automobile manufacturers in the rather dramatic drop in the sale of the so-called muscle cars. We have been told by the manufacturers, in fact we have been severely criticized by the manufacturers in discussions we have had with them, that the insurance system, the loading of the insurance rates on these muscle cars has deterred the sale of the cars.

Now we do know this. We do know from statistical evidence, from studies which have been made by a number of companies that the muscle cars do cause more accidents and more serious accidents.

So, at least the present insurance system in its rating has kept off the roads, I gather from what the manufacturers say, a substantial number of such muscle cars. And this has brought about a reduction in the number of injuries. I think this is to some degree a deterrence.

The cost of the present automobile insurance for the high-powered cars which are the cars which cause a much higher proportion of accidents on the road have kept those cars off the roads.

Senator HART. While Mr. Sutcliffe is reacting to that, let me say something that, of course, is reasonable in Detroit, but logically what is suggested by the point you just made that muscle cars have been reduced in number because of the economics of the insurance rating system and we have thereby reduced the number of serious accidents? Does that suggest in terms of the national good we would be better off if all cars were of lower horsepower and smaller in body size?

<sup>1</sup> David Klein and Julian Waller, *Causation, Culpability and Deterrence in Highway Crashes* (1970), for the U.S. Department of Transportation (hereinafter cited as *Causation, Culpability and Deterrence*), and U.S. Department of Transportation, "The Human Factor in the Highway Environment: Normal and Deviant Behavior," *Driver Behavior*, pp. 111-198.

<sup>2</sup> *Causation, Culpability and Deterrence*, p. 130.

<sup>3</sup> *Ibid.*

Mr. MAISONPIERRE. Senator Hart, I can only give you my own personal feeling on this, not our association's feeling. I would certainly welcome a trend which I think perhaps we are witnessing in the small and less powerful cars. I would welcome it for a number of reasons.

No 1, cost of operation.

No. 2, safety.

No. 3, I have children driving those cars, and I would just as soon have them drive cars which are not as powerful, they don't have the getup and go which some of them do.

On the other hand, I think that we should recognize that as long as we have a system which is built on speed and on power, I cannot totally do away with the idea that cars need to have some so-called reserve power. I say this because in the fairly recent years, the only serious or close call I have ever had in a car was driving a car which had very little power, it was a foreign car with very, very little power, trying to pass a truck when perhaps I shouldn't have passed the truck, and almost getting involved in a pretty terrible accident. I had misjudged the reserve power of the car.

I think from personal experience, I think there is something to this reserve power, but still the trend toward making speed and power attractive should be reversed, and we should encourage in every possible way to reverse this trend.

Senator HART. Thank you.

Mr. SUTCLIFFE. Mr. Maisonpierre, in response to your example of possible behavior modification that occurred because of higher premium rates being assigned to muscle cars, I can only say in response to that analogy and in questioning its applicability that, as Senator Hart pointed out, with regard to the film which we saw on the record, that every mile of traffic driving requires about 20 major decisions on the part of the individual. Whereas in the decision to buy a car, though many, many factors are involved, there is usually one decision at a particular point in time with an ability to be very careful and selective and one where price would have a much more direct impact. In fact this very principle is recognized in S. 976 when we asked insurance companies to rate vehicles on the basis of property damage susceptibility and ask for the index for injury severity.

Whether or not a rate increase following an accident would modify driving behavior is questionable. There may be deterrent value, but it might affect only one or two of the kinds of conscious driving decisions. But in that 1 mile and those 20 major decisions price might not be able to reach all making other behavioral factors that make up a person's total driving behavior.

Also, rate increases oftentimes will occur across the board as to the classification and maybe one accident will not result in another classification, particularly if a person is in a high-risk category already.

So the relationship of his own personal driving behavior to a cost increase might be much less direct than his own premium cost because he has a muscle car. That would be a possible distinction between the muscle car deterrence analogy which you suggest and its applicability to driver behavior modification.

Would you care to respond?

Mr. MAISONPIERRE. I want to make it very clear that we endorse wholeheartedly Senator Hart's suggested recommendation which we

find in the bill, that automobiles be rated on the basis of their damageability and safety. In fact, Senator Hart, following the hearings which you held 2 years ago, one of our companies immediately got started along these lines. It has been severely criticized perhaps by some of the manufacturers. It has set up some very definite classification rates and has filed those classification rates in quite a number of States following up on your recommendation, and we do endorse that part of the bill.

We also recognize that driving a car requires a great many acts, both conscious and unconscious, but we believe that the human body is amazingly adaptable and that, in spite of the crowded condition of the highways, there appears somehow to be enough leeway in the operation of a car that even though one should recognize all of these difficult things that must be done to drive a car, still, the majority of people drive without accidents for many, many years.

Mr. SUTCLIFFE. I think we have exhausted that particular subject. Perhaps on some of these other issues we can submit questions for the record.

I have one further question, and it relates to a part of the plan called insolvency protection. You advocate the passage of post-insolvency assessment laws in the various States.

Mr. MAISONPIERRE. This is right.

Mr. SUTCLIFFE. I would like to ask whether or not the State of Illinois has yet passed an insolvency bill.

Mr. MAISONPIERRE. As of this morning the Illinois Legislature had passed a bill through the house, the senate insurance committee has reported out a bill unanimously. The bill was pending on the floor of the Senate. Seasoned observers feel convinced that there is no question whatsoever that the bill will be enacted by the Illinois Legislature in the very near future, if not today. But I checked on this this morning before coming down.

Mr. SUTCLIFFE. I imagine that if one were to test the coverage, the State-by-State approach to insolvency which your organization has fought very strongly for, one would also have to inquire about the progress of insolvency legislation in the State of Texas.

Mr. MAISONPIERRE. There again, Mr. Sutcliffe, the situation is identical to that in Illinois. The bill passed unanimously through the House, it passed unanimously through the appropriate Senate committee—I am not sure which committee it is—and it is pending on the floor, and there is no question whatsoever that the bill will be enacted by the legislature and signed by the Governor, in both Illinois and Texas.

We have worked very hard to enact such laws, not only in Illinois and Texas but in all jurisdictions. I would expect by the end of this legislative year, in the neighborhood of 42 or 43 States at least will have enacted the model NAIC postassembly insolvency law.

Mr. SUTCLIFFE. With the experience of insolvencies in several States which have had postinsolvency assessment laws, what is your association's appraisal of the way in which they have been able to handle consumer claims made to the industry insolvency fund in lieu of their own companies because of the insolvency?

Mr. MAISONPIERRE. I think this has worked out quite well. I know of two particular cases, one in California and one in Arizona, and if I may, Senator Hart, I would like to submit for the record the status of the pending claims at this time.

In Arizona—

Senator HART. For the committee's files, yes, we would welcome it.

Mr. MAISONPIERRE. I know in Arizona it was just a matter of a few months after the insolvency had occurred that the majority of the claims had been paid, and by that I mean, as you well know, some of the cases in the present system must go through the same procedure that any other case must go through; that is, the liability must be determined. But there has been absolutely no delay occurring in a payment of claims because of the insolvency.

I would like to introduce for the record the status of the insolvency losses in California and Arizona.

Mr. SUTCLIFFE. Mr. Maisonpierre, the assigned claims provision in S. 945 as to the treatment of insolvencies closely parallel the kind of collective action of insurance companies in the States under postinsolvency assessment plan. Could you furnish for the record your reaction to that kind of an approach to taking care of the insolvency problem and its compatibility with the existing postinsolvency assessment plans which the States have enacted?

Mr. MAISONPIERRE. I would like to submit this for the record, if I may.

(The following information was subsequently received for the record:)

#### COMPARISON OF ASSIGNED CLAIMS PROVISION OF S. 945 AND STATE POST INSOLVENCY ASSESSMENT PLANS

For the following reasons, we believe that the state post insolvency programs are by far preferable to the assigned claim plan of S. 945.

##### 1. *The Assigned Claim Plan is an incomplete solution*

The state programs cover all insolvencies related to all lines of property and casualty insurance. In fact, approximately 95% of all property and casualty premiums are today protected through state insolvency programs.

The Assigned Claim Plan limits its coverage to automobile, thus leaving a major coverage gap.

The state programs not only insure the payment of insolvency losses but are so structured as to improve the regulatory climate to prevent insolvencies in the first place. The Assigned Claim Plan, on the other hand, makes no pretense to seek to prevent companies from becoming insolvent.

##### 2. *The Assigned Claim Plan assignment could result in the unfair treatment of smaller companies*

The state insolvency programs distribute the insolvency losses proportionately to the amount of insurance which every company writes. The Assigned Claim Plan, on the other hand, would distribute the claims on such a proportionate basis. Thus, under the Assigned Claim Plan program, a small company could be assigned a major loss—way out of proportion to the amount of insurance be assigned a major loss—way out of proportion to the amount of insurance it writes. This is obviously highly undesirable.

##### 3. *The state insolvency plans allow for tight cost control*

The state plans concentrate all of the insolvency claims and losses through one administration. Thus, close cost accounting and accountability can be maintained.

The Assigned Claim Plan, on the other hand, would diffuse the claims and the losses and it would be most difficult under an assigned claim program to keep accurate accounting of the losses.

Mr. SUTCLIFFE. One other thing for the record, Mr. Maisonpierre. You have no doubt been familiar with the figures that we have been working with on this committee, \$14 billion of premiums collected annually—these are estimates for 1970—\$11 billion of economic loss an-

nually, an insurance mechanism providing \$7 billion of benefits and those benefits not distributed on a 1-to-1 ratio as dollars of economic loss.

For the record, could you provide and actuarially justify to the extent possible, how you would think that the total premium dollars and the benefits paid would shake out if your plan were adopted simultaneously in the 50 States? I think we should assume at this point also a car population with five-and-five bumper capability to give the property damage side of the picture as well as the bodily injury side of the picture if you can. To the extent you can factor this out, and where you have holes in your own estimates, if you indicate those to the committee, we would certainly appreciate it.

Mr. MAISONPIERRE. We would like to do this.

I would like to say one word. You are predicating, of course, the losses, the economic losses and the extent of loss recovery I would imagine to a large degree on the DOT's economic consequences of motor vehicle accidents study. We have some grave questions about the accuracy of the data collected in the study.

I know that you are pressed for time and I will not go into it. We do have a critique of this study as part of our appendix in our statement, and I would like to emphasize that we do not happen to agree with the data collected, and the reasons for our disagreement are detailed as one of the appendices of our statement.

Mr. SUTCLIFFE. Perhaps then you could provide your cost estimates on the basis of your own figures for the present system, DOT's figures for the present system updated to the \$14-\$7 billion relationship so that we can have both pictures.

Mr. MAISONPIERRE. Very good, sir.

Mr. SUTCLIFFE. And then we will be in a position to judge which picture we will use for examination or where the differences are and how significant they are.

Mr. MAISONPIERRE. Right.

(The following information was subsequently received for the record:)

ARIZONA INSURANCE GUARANTY ASSOCIATION,  
Phoenix, Ariz.

*Summary of loss claims activity—Period ending Feb. 26, 1971*

Automobile:

Closed .....	341
Open .....	242
Amount expended.....	\$43,307.64
Present reserves.....	\$585,607.00

All other:

Closed .....	95
Open .....	56
Amount expended.....	\$24,039.92
Present reserves.....	101,809.00
Total expended.....	67,347.00
Total outstanding reserves.....	\$687,416.00

## KEY INSURANCE EXCHANGE INSOLVENCY ADJUSTERS.

Los Angeles, Calif., April 26, 1971.

Re Key Insurance Exchange

liquidation progress report.

Mr. R. E. EARLY,

Chairman, Board of Governors, California Insurance Guarantee Association,  
Los Angeles, Calif.

DEAR BOB: Herewith is a listing of drafts we have issued from the inception of our program to April 1, 1971. Our first claims draft was issued on December 1, 1969.

Type of drafts issued	Number	Amount
Bodily injury.....	202	\$393,934.90
Medical payments.....	50	6,348.61
Uninsured motorists.....	83	137,435.42
Property damage.....	66	19,292.10
Collision.....	75	38,624.08
Comprehensive.....	31	10,180.26
Allocated legal expense.....	298	139,801.80
Allocated adjustment expense.....	223	10,742.14
Unallocated adjustment expense.....	125	55,403.66
Premium refunds to members.....	4	543.98
<b>Total.....</b>	<b>1,157</b>	<b>812,306.95</b>

Our Novato Bank Account was closed during this period, which required the cancellation of a substantial number of small "stale drafts" mostly of the Property Damage, Collision and Comprehensive category. An audit of all drafts issued to date also resulted in the change of some draft allocations. Therefore the number of drafts listed as issued on this April Report in some cases is less than shown on our January Report.

## CLAIM RESERVE SUMMARY—EXCLUDING ADJUSTMENT EXPENSE

The following is a list of claims reserves outstanding on April 1, 1971, compared to December 20, 1969, the date of our first audit.

	Dec. 20, 1969 claims count	Dec. 30, 1969 reserves	Apr. 1, 1971 claims count	Apr. 1, 1971 reserves
Bodily injury.....	354	\$782,183.00	120	\$341,000.00
Medical payments.....	74	26,230.00	0	0
Uninsured motorists.....	115	183,672.00	24	65,000.00
Property damage.....	467	181,941.00	13	14,835.00
Collision.....	141	57,655.00	0	0
Comprehensive.....	72	21,251.10	0	0
<b>Total.....</b>	<b>1,223</b>	<b>1,252,932.10</b>	<b>157</b>	<b>420,835.00</b>

## NOTES TO ABOVE CHART

A. During the past three months, we have reduced the number of open claims by 62 units.

B. In this period, we have paid out a total of \$49,884.41 on claims (not including legal or claims expense) and have reduced our outstanding claim reserve by \$54,915.00.

C. Compared to our initial *claim reserve* of \$1,252,932.00, we have paid out \$805,815.37, and have reduced this reserve by \$832,097.00.

*Adjustment expense*

During the past three months, we have incurred \$19,842.75 in legal expense, and \$6,503.29 in allocated and unallocated adjustment expense. Our remaining reserve of \$96,081.94 to cover future legal and adjustment expenses should be adequate.

*Financial statement*

The attached statement reflects our position as of April 1, 1971.

Based on our experience to date, I believe these estimates are realistic, except the asset of our estimated recovery as a general creditor of Key Insurance Exchange may be over-stated. Any shortage in this estimate of \$100,000.00 will be more than offset by our interest income, which has not been included in our claims accounting figures.

R. H. WENZEL

*California Insurance Guarantee Association financial statement—Apr. 1, 1971*

Assets:	Amount
CIGA premiums.....	\$1,350,104.64
Less expenditures to date.....	812,306.94
Total .....	537,797.64
Estimated future subrogation recoveries.....	1,000.00
Estimated recovery as general creditor of Key Insurance Exchange .....	100,000.00
Grand total.....	638,797.64
Liabilities:	
Claims reserves.....	420,835.00
Less future statutory savings.....	—20,000.00
Total .....	400,835.00
Allocated and unallocated adjustment expense reserve.....	96,081.94
Total .....	496,916.94
Surplus .....	141,880.70

Senator HART. If there are additional questions, may we submit them to you and we will hold the record open for a while.

Mr. MAISONPIERRE. Thank you, sir.

Senator HART. Again I have enjoyed the exchange and I know as I have said before, when we get into an analysis of the details that you have furnished us, it is going to be helpful.

Mr. MAISONPIERRE. Thank you.

(The statement follows:)

# **Auto Insurance Reform**

**Statement of the  
American Mutual Insurance Alliance  
before the  
Senate Commerce Committee  
May 6, 1971**



**AMERICAN MUTUAL INSURANCE ALLIANCE**

**(967)**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE GUARANTEED PROTECTION PLAN FOR AUTO REFORM	1
A. Automobile Design - Key to Major Insurance Savings	3
B. Proposed Reforms in the Auto Reparatons System	8
1. Basic Benefits Would Be Guaranteed	8
2. Driver Responsibility Would Be Retained	9
3. Claim Settlements Would Be Streamlined	9
4. Objective Yardsticks Would Be Established For Measuring Damages	10
5. Legal Rules Governing Claim Settlements Would Be Streamlined	12
6. Attorney Fees Would Be Regulated	13
7. Fraudulent Claims Would Be Discouraged	14
8. Arbitrary Policy Cancellations Would Be Prohibited	14
9. Insolvency Protection Would Be Provided	15
III. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH DOT RECOMMENDATIONS	15
IV. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH MOTOR VEHICLE INFORMATION ACT	22
V. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH CONSUMER ATTITUDES	28
1. Driver Responsibility for Accidents	29
2. Eliminating "Pain and Suffering" Payments	31
3. Consumer Attitudes Toward a Total "No-Fault" Plan	34
4. Attitudes Toward Making Auto Insurance a "Last Resort" Coverage	36
5. Consumer Attitudes Toward Merit Rating	37
6. Attitudes on the Causes of Rising Insurance Costs	38
VI. UNIFORM MOTOR VEHICLE INSURANCE ACT	40
1. Unresolved Problems	41
2. The Seriously Injured Victim	44
3. General Damages	48
4. Delay	49
5. Who Is Left Out?	50
6. Coverage Gaps	52

(continued)

TABLE OF CONTENTS

Page 2.

	Page
VI.     UNIFORM MOTOR VEHICLE INSURANCE ACT (continued)	
7. Is Negligence Still Relevant?	53
8. Efficiency of the Auto Insurance System	54
9. Imposition of Federal Regulation of Insurance	55
10. Legal and Constitutional Problems	57
11. Access to Insurance	58
12. Changes in Rating Procedures	61
VII.    THE FEDERAL GOVERNMENT'S ROLE IN AUTO REFORM	62
VIII.   CONCLUSION	63
APPENDICES	64

## I. INTRODUCTION

My name is Andre Maisonpierre, and I am a vice president of the American Mutual Insurance Alliance. We are a voluntary association of more than 100 mutual insurance companies which provide automobile and other property-casualty coverages in all 50 states and the District of Columbia.

We welcome this opportunity to tell you what the Alliance is doing to reform the automobile reparations system, to share our research with you, and to offer you our views on the proposals currently pending in Congress.

Automobile crashes impose an increasingly heavy burden on the American public. One out of four automobiles on the highways is involved in an accident each year. That adds up to more than 20 million crashes, 30 million damaged vehicles, more than 4 million injuries, 55,000 deaths and a staggering economic loss exceeding \$16 billion. That's the equivalent of about \$75 for every man, woman and child in the United States, or \$375 for a family of five.

The human cost - the pain, the injuries, the loss of life - are borne directly by the accident victims and their families. But the economic loss is shared by every motorist and consumer, in their out-of-pocket expenses and in the insurance premiums they pay.

## II. THE GUARANTEED PROTECTION PLAN FOR AUTO REFORM

The American Mutual Insurance Alliance believes these excessive human and economic losses can be dramatically reduced. We have developed a reform proposal called the Guaranteed Protection Plan, which deals with all of the major factors contributing to high insurance costs and consumer dissatisfaction. This is a comprehensive

approach to the automobile problem - an approach that calls for responsible reform in the auto reparations system, in vehicle design, in driver performance, and in traffic safety regulations.

The Guaranteed Protection Plan is the result of a decade of statistical studies, legislative research, public attitudes surveys, auto crash tests and field experiments with new claims handling methods.

This proposal is based on the premise that automobile insurance reforms alone cannot lift the intolerable burden created by highway crashes. Changes in insurance affect only what happens to the loss after it occurs - whether it is to be borne by the crash victim, paid by the negligent motorist, or shifted to someone else's shoulders. Any meaningful reform program - to be effective and serve the best interest of the consumer - must also concern itself with measures to keep the loss from occurring in the first place, and to reduce the severity of injuries and economic costs.

Reducing the number of crashes will be extremely difficult, because both the number of cars and the mileage driven are going up much faster than the growth in population. Thus each person's chances of having an auto accident are getting worse every year as congestion worsens and the average person's exposure to traffic lengthens. Herculean efforts to improve roads, vehicles and driver performance will be needed just to keep the number of accidents from getting much worse.

The prospect for reducing the excessive costs of auto crashes is much more hopeful. Changes in automobile design, using technology already developed and available, can bring about dramatic reductions

in the economic burden created by highway crashes.

A. Automobile Design - Key to Major Insurance Savings

Damage to vehicles accounts for a major part of the excessive economic loss produced by highway crashes. One reason is that damaged cars outnumber crash injuries by more than 7 to 1. The other reason is that today's cars are vulnerable to an astonishing amount of damage in low-speed, "fender-bender" crashes. Four popular sedans recently crash-tested into a barrier at walking speed - 5 miles per hour - produced repair bills averaging \$332.

The result is that auto damage has become the dominant factor pushing up the cost of automobile insurance. Few people realize the startling impact which high repair bills are having on the insurance premiums paid by individual car owners.

About two-thirds of the total premium paid for a typical full package of automobile insurance goes for coverages that pay for vehicle repair or replacement, including collision insurance, property damage liability and comprehensive physical damage (vandalism, theft, hail damage, etc.). The bodily injury portion of auto insurance typically accounts for only one-third of the total insurance premium (See Exhibit 1).

Moreover, the cost of the vehicle coverages is now rising at an accelerating rate, while the cost of the bodily injury coverages is slowing down. Rate filings made in a number of states over the past few months called for increases in the vehicle damage coverages of 10% to 20% or more, while the bodily injury rates remained the same or required minimal increases.

The accelerating cost of auto repair also can be demonstrated by auto damage appraisals made over an 11-year period, by the actual amounts paid out for vehicle damage claims, and by looking at the one-year increases revealed in the crash tests conducted for the Insurance Institute for Highway Safety, the wholly-owned research arm of the auto insurance industry.

The appraisal method compares the cost of repairing front-end collision damage involving comparable parts on 1960 cars damaged in 1960, and 1971 cars damaged in 1971. Repair estimates are for damage to the front bumper, grille, fender, headlight, radiator, windshield, fan and water pump.

	<u>1960 Repair Cost</u>	<u>1971 Repair Cost</u>	<u>% Increase</u>
Ford Fairlane 500	\$388.77	\$ 947.64	144%
Chevrolet Biscayne	\$435.95	\$ 845.79	94%
Pontiac Catalina	\$423.39	\$1,024.13	141%

These results are corroborated by rating bureau data on the amounts actually paid out in insurance claims for vehicle repairs. The average repair claim jumped from \$131 in 1960 to an estimated \$276 in January, 1971 - an increase of 111%.

Earlier testimony by Dr. William Haddon, Jr., president of the Insurance Institute for Highway Safety, also confirms the accelerating increase in auto repair costs. The Institute's recent crash tests on twelve 1971 car models show that the 1971 cars cost an average of 50% more to repair than their 1970 counterparts - in spite of all that has been done to stimulate auto manufacturers to recognize the impact which fragile designs has had in increasing the transportation costs of the American consumer.

Specifically, damage to the 1971 models in crashes at only 5 miles per hour averaged \$332, as compared with \$216 for the 1970 models.

These test results clearly indicate that presently available technology continues to be ignored in the design and manufacturing of automobiles. The technological remedies remain on the shelf where they have gathered dust for many years.

Dr. Haddon was particularly critical of ineffective auto bumpers that do little to protect the car from damage even in these low-speed collisions. In addition, he noted that retractible headlights, fancy chrome grilles, and other design features intended primarily for aesthetic appeal have added substantially to the damageability of today's automobiles.

The Institute's testimony covered a number of misunderstood points about low-speed crash problems. Dr. Haddon was emphatic in stating that there is no necessary conflict between the goals of protecting automobile occupants from injury and protecting the vehicle itself from costly damage in collisions. He noted that vehicle designs which would accomplish both objectives are well within the present state of the art.

Another misunderstanding is that car designs to prevent low-speed crash damage would automatically mean car price increases. Dr. Haddon testified that by doing away with unnecessary configurations and ornamentation, and using the freed-up space for proper energy absorbing structures, auto manufacturers could reduce the initial price of the vehicle or, at worse, maintain it at its present level.

The Institute's testimony also noted that collisions resulting in damage to the rear ends of cars are nearly as common as collisions involving damage to front ends of cars.

Most importantly, the results of the Insurance Institute's low-speed test crashes show that the bulk of property damage is produced by minor crashes.

To get a more accurate picture of the economic losses involved in low-speed collisions, one major insurance company has tabulated the property damage claims it closed during a one-month period late in 1969. A total of 10,583 claims were tabulated. These represented collisions occurring on a country-wide basis, involving liability claims made by the other drivers for damage to passenger cars. This study reveals that 92% of all these insurance claims were for \$600 or less. Thus, the Insurance Institute's estimates of damage done in low-speed crashes have been verified by actual experience.

The Department of Transportation's report makes mention of the significant opportunities for economic savings in minor accidents. The report notes that 46% of the total estimated compensable economic loss resulting from 1967 automobile accidents was for property damage and that approximately 22 million victims of accidents who suffered only property damage incurred total losses of about \$3.8 billion.

We concur wholeheartedly with these conclusions of the Department of Transportation:

"A car capable of resisting damage in low-speed collisions and of protecting its occupants in severe crashes would very substantially reduce overall accident losses, even if all vehicles in severe crashes were totally demolished in an economic sense. Economic loss reduction

efforts, therefore, to be truly effective, must address the accident environment of both the serious and minor crashes."

Improvements in vehicle design already are helping to reduce crash injuries and to minimize the cost of the economically less significantly bodily injury coverages. Over the past four years, the severity of injuries has been substantially reduced by regulations requiring auto manufacturers to install impact-absorbing steering columns, more crash-resistant glass in auto windshields, front and rear seat belts, stronger doors, and other safety features.

The result is that the cost of bodily injury liability insurance has been rising at a much slower rate than the cost of vehicle damage insurance, despite the zooming cost of medical care and the rising cost of replacing income loss as the result of auto crash injuries.

Similar dedication to reducing car fragility would go a long way toward actually reducing the cost of automobile insurance. The American Mutual Insurance Alliance will continue to support measures aimed at this objective as part of its Guaranteed Protection Plan. I will comment further on this in Section IV. Impact-absorbing bumpers and more crashworthy cars are absolutely essential if auto insurance costs are to be reduced or even stabilized. Some companies already are rating cars for damageability. Others have offered a 20% reduction in the cost of collision insurance for any car that can withstand even a 5-mile-per-hour crash, rear and front, without damage.

As for compensation to car owners for damage caused in highway crashes, the Guaranteed Protection Plan would retain existing property damage liability protection for situations where the negligent driver should pay. The Plan also would retain collision and compre-

hensive coverages for those situations where the vehicle owner himself is responsible for the damage to his own car.

**B. Proposed Reforms in the Auto Reparations System**

The Guaranteed Protection Plan also calls for major reforms in the auto reparations system. This portion of the Plan would produce changes in the insurance coverages purchased by car owners, changes in the procedures used to compensate crash victims, and changes in the legal rules governing settlements of disputed claims.

These proposals for responsible insurance reform are designed to achieve a reasonable balance among three difficult and often contradictory goals:

1. To provide crash victims with prompt and fair compensation.
2. To encourage driver responsibility.
3. To keep overall costs at a reasonable level.

This portion of the Plan also seeks to allocate the cost burden fairly among vehicle owners, to prohibit unwarranted cancellations of insurance and to ease the burden on congested courts.

Highlights of the proposal are as follows:

**1. Basic Benefits Would Be Guaranteed**

State laws would be amended to require that every private passenger automobile policy issued or delivered in the applicable state shall include the following minimum benefits payable regardless of fault:

- (A) Medical and hospital expense coverage up to a \$2,000 per person limit in any one accident and subject to an optional deductible (applicable only to the named insured and resident family members) up to \$250.

(B) Disability income coverage of 85% of gross income lost during a period commencing 30 days after the accident and continuing for 52 weeks, subject to a maximum of \$500 per month or a total of \$6,000.

Persons covered include the named insured, members of his family residing in the same household, guests, passengers and pedestrians. Insurance companies would be permitted to offer broader coverages than the statutory minimums, and it is anticipated that healthy competition would provide a wide choice of higher limit, first-party coverages for vehicle owners who desired to purchase them.

## 2. Driver Responsibility Would Be Retained

Existing liability protection would be retained and made to work more effectively under the Guaranteed Protection Plan. Persons injured through the negligence of another driver would be entitled to compensation from the other driver for damages that go beyond the basic benefits. In addition, insurance companies which paid the medical and disability benefits to their own policyholders could seek reimbursement from the party at fault (if any) or that party's insurance company. Thus, the proposed system would be no-fault in the sense that the accident victim would collect for his basic economic losses, regardless of who caused the accident. But it would be a fault system in the sense that it would preserve the principle of personal accountability. The cost of the accident ultimately would be charged against the record of the negligent driver, and not against the record of the innocent victim as would be the case under a total no-fault system.

## 3. Claim Settlements Would Be Streamlined

Two different types of arbitration would be used to speed settlements, cut the cost of handling claims and ease the burden on the courts.

The Plan calls for mandatory arbitration of disputes in the vast number of liability claims involving damages under \$3,000, using court supervised procedures which have worked successfully in Pennsylvania since 1952. One of the Department of Transportation's studies found that 73% of litigated cases fall into this under-\$3,000 category. In Pennsylvania, such cases are assigned to a three-man arbitration panel, operating under rules and procedures established by the court having jurisdiction over the case. Either party may appeal the arbitrator's decision. However, the rate of appeals has been less than 8% under the compulsory arbitration procedure used in Philadelphia. A similar system was instituted on a three-year trial basis in New York State on September 1, 1970. Initial reports indicate that the plan has been well accepted in the Monroe County test area, which includes the City of Rochester, and that other areas of New York are considering adoption of mandatory arbitration.

A second form of arbitration would be mandatory in resolving disputes arising in subrogation claims between insurance companies. Intercompany arbitration already is widely used for handling auto property damage cases. The procedure is quick, inexpensive and efficient. The important thing is that the claimant is paid first and then any necessary readjustment of the insurance loss is made between the companies, without burdening the courts.

4. Objective Yardsticks Would Be Established For Measuring Damages

The Guaranteed Protection Plan would provide an objective standard for determining general damages - such as the damages for disfigurement, loss of bodily function, pain and suffering, and other damages which

go beyond the accident victim's out-of-pocket economic losses such as medical expenses and lost wages.

Payments for these general damages would be limited to no more than 50% of medical and hospital expenses if such expenses ran \$500 or less. When medical and hospital expenses exceeded \$500, payment for general damages may not exceed \$250 plus up to 100% of the excess over \$500. These limits are intended to curb nuisance claims and to offset the cost of extending the basic no-fault benefits to accident victims generally. These limits do not apply in cases involving death, permanent disfigurement, dismemberment, permanent loss of a bodily function, and in other exceptional circumstances where a court or jury finds that such a limitation would be unjust. The court, or either party, may request an impartial medical panel to make a determination of this and other issues.

Objective yardsticks also would be established for measuring loss of earnings. At present, damages for loss of earnings are not subject to income tax. This allows some people to be overcompensated, because their recovery is computed on the basis of gross earnings instead of "take home pay." The Guaranteed Protection Plan provides that these loss of earnings awards be reduced in recognition of the income tax savings. The bill calls for a statutory 15% offset, subject to reduction if the claimant can show that his actual income tax would have been smaller. Enactment of this provision will assure that claimants seeking damage for loss of income will be neither undercompensated nor overcompensated for that loss.

##### 5. Legal Rules Governing Claim Settlements Would Be Streamlined

Two changes in the legal rules governing claim settlements are proposed.

One calls for adoption of comparative negligence laws. Twelve states have adopted one form or another of the comparative negligence rule. Moreover, the doctrine is applied in claims coming under the Federal Employer's Liability Act, the Merchant Marine Act and the admiralty laws of the United States and England.

The Alliance believes the Wisconsin type of comparative negligence statute to be the most equitable of the various types now in effect. It provides that the person injured can collect from a negligent defendant as long as he is himself less than 50% negligent, and the defendant is more than 50% negligent. However, the amount of his recovery is reduced accordingly.

The "contributory negligence" doctrine currently in effect in most states provides that an injured party is completely barred from recovery even though his negligence was slight in comparison with that of the other party to the accident. In practice, the existing rule is not actually so rigidly enforced, and juries as well as insurance adjusters often apply something akin to a comparative negligent rule in arriving at judgments or settlements. However, to the extent that the operation of the contributory negligence rule sometimes produces a harsh, unjust result in individual cases, the proposed reform will eliminate those inequities.

Another change in the legal rules governing claim settlements is intended to further encourage insurance companies to make immediate advance payments to injured victims to cover medical expenses and wage losses as they accrue.

It provides that such advance payments will not be considered an admission of liability in any subsequent legal action that may result. A similar rule is proposed for property damage claims, so they may be settled separately from any bodily injury liability claim arising out of the same accident. This would encourage prompt settlement of the property damage portion, where final settlement of the injury claim is delayed pending medical treatment or other causes beyond the insurance company's control.

6. Attorney Fees Would Be Regulated

The Guaranteed Protection Plan would place a limitation of 25% on attorneys' fees where such fees are contingent (dependent) on the amount awarded the person represented by the attorney. It also permits the courts to establish graduated contingent fees scheduled subject to the 25% limitation. Attorneys also would be required to report all contingent fee payments to the clerk of the court.

The contingent fee system is widely used in this country, and is regarded as a means of making available competent legal representation to persons who might not otherwise be able to hire an attorney. At the same time, there is widespread criticism that lawyers' fees in auto accident cases are too high. The proposed regulation would prevent abuses in those cases not removed from the courts by other provisions of the Guaranteed Protection Plan, such as the automatic first-party benefits and the use of mandatory arbitration in the vast majority of claims disputes.

Contingent fee regulation already is practiced today in some jurisdictions. The First and Second Departments of the New York

Appellate Court have established fee schedules. Regulation also is enforced in Maine, Oklahoma, Massachusetts (criminal and domestic relations cases), and Pennsylvania.

7. Fraudulent Claims Would Be Discouraged

The Guaranteed Protection Plan provides for imposing stiff penalties for false and fraudulent activities with respect to claims filed against individuals or insurance companies. It also includes provisions regarding the admissibility in evidence of unreasonable refusal by a claimant to submit to medical examination to determine the nature and extent of his injuries and the medical treatment thereof.

8. Arbitrary Policy Cancellations Would Be Prohibited

To protect car owners against unwarranted cancellation of their auto insurance, the Guaranteed Protection Plan calls for passage of legislation limiting permissible reasons for cancellation of private passenger automobile insurance policies to nonpayment of premium or suspension of drivers license or vehicle registration. Thirty-eight states already have enacted cancellation laws with insurance company support. Member companies of the American Mutual Insurance Alliance also have taken action through the appropriate rating bureaus to provide this protection voluntarily in the additional states. Passage of laws in the remaining states would make certain that all companies do so. The Plan further provides specific notice requirements with respect to the insurer's intention to cancel or nonrenew. It also requires that the reasons for cancellation be provided to the insured upon request.

### 9. Insolvency Protection Would Be Provided

To protect the public against insurance company insolvencies, the Guaranteed Protection Plan calls for prompt state enactment of post-insolvency assessment plans in every state where such plans are not already in effect. Under these plans insurance carriers licensed to do business in each state may be assessed to provide funds for paying the unmet claims of companies that become insolvent. To date, 33 states already have enacted insolvency legislation, including 1971 enactments by the states of Indiana, Maryland, Minnesota, Montana, North Dakota, Utah and Wyoming. Several additional states are expected to take action before the current legislative sessions end.

### III. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH DOT RECOMMENDATIONS

The reparations system reforms proposed under the Guaranteed Protection Plan are similar in most respects to the findings and recommendations of the Department of Transportation, as contained in House Concurrent Resolution 241. In his report to the Senate Commerce Committee on March 18, 1971, Secretary of Transportation John A. Volpe proposed that the states move promptly to experiment with reform plans which expand the use of first-party, no-fault coverages, but which avoid radical, irreversible changes. Mr. Volpe noted that "there remains much legitimate uncertainty about how far and how fast

the public wants or is willing to go" in changing the present system. He also said there exists "genuine and warranted" concern as to the "unknown and essentially unknowable price and cost implications of any major change in the system."

Because of these unknowns, and for other reasons relating to the undesirability of a federal takeover of the state regulatory function, the Administration concluded that state level experimentation is indicated.

The Guaranteed Protection Plan is consistent with that recommendation, and in fact, already is being actively considered in a number of states, along with other similar plans. The proposed concurrent resolution outlines six principles for the states to use in evolving a "rational, equitable and compatible" new system for compensating auto accident victims.

1. The first principle is that basic benefits should be provided to auto accident victims on a first-party, contractual basis. The Guaranteed Protection Plan would require that auto insurance policies contain such benefits.
2. The second principle is that basic benefits should be payable to all accident victims without regard to fault, excluding those who willfully injure themselves. The basic benefits provided under the Guaranteed Protection Plan are on a no-fault basis. However, we have suggested that legislatures also consider excluding no-fault payments to persons injured while driving a stolen car, those injured while seeking to elude lawful arrest, and those injured while driving under the influence of intoxicating liquor or narcotics.

3. The third principle is that the basic benefits should provide compensation for all economic loss, subject to reasonable deductibles and limits, and the system should be designed to avoid litigation for the mass of accidents. The Guaranteed Protection Plan's recommended basic benefit limits of at least \$2,000 for medical expenses and at least \$6,000 for wage losses would be adequate to cover in full the wage and medical losses incurred in more than 95% of all auto crashes, based on DOT data. Taken as a whole, the Plan also would eliminate the delay and expense of court trials for all but a few serious cases where settlements could not be arrived at by negotiation. And, even in these few cases, the accident victim would receive the basic no-fault benefits.

4. The fourth principle is that the reparations system should provide adequate, but not excessive, compensation to the accident victim at minimum cost. Therefore, the resolution provides that benefits obtainable by the accident victim from other benefit sources should be coordinated and meshed with those obtainable from the automobile accident reparations system with a view toward internalizing automobile accident loss costs by making automobile insurance the primary benefit source whenever feasible. The Guaranteed Protection Plan generally conforms to this principle. Basic benefits under the auto policy are primary, for the most part, and tort recoveries also are primary with the usual exception of workmen's compensation benefits.

5. The fifth principle is that maximum choice should be afforded the motorist in selecting his insurance source provided the

coverage complies with the principles for the required minimum mandatory coverage. With more than 800 insurance companies currently writing automobile insurance, most motorists today already have a very wide choice of insurance sources. In addition, the industry has established automobile insurance plans in every state to guarantee a source of insurance protection to the small percentage of motorists whose high risk characteristics make it difficult for them to obtain coverage in the voluntary market. The Alliance advocates that these plans be expanded to provide physical damage coverages as well as the bodily injury coverages, and that convenient premium financing arrangements be made available. Several states already have taken action to accomplish this result, and other states are expected to follow suit in the near future.

6. The sixth principle is that rehabilitation, avocational as well as vocational, should be a primary function and objective of the compensation system. The Guaranteed Protection Plan's basic benefits cover medical rehabilitation. Optional coverages and tort recoveries offer broader rehabilitation care.

The Alliance proposal also is consistent with Mr. Volpe's suggestion that states might want to experiment initially with a reform plan that would offset the cost of the first-party medical coverage by the savings achieved in revising the rules on general damages. Under the Guaranteed Protection Plan, such cost savings would be produced by imposing limits on the amount of general damages that could be collected for injuries not involving death, disfigurement or permanent impairment. In addition, the provisions requiring car manufacturers

to install more crash-resistant bumpers would bring about even more significant savings on the dominant vehicle damage portion of the overall insurance premium.

The Alliance also specifically endorses the finding that "assumption of the present comprehensive state regulatory authority over automobile insurance by the Federal Government would be fraught with great and grave consequences giving rise to issues and problems of great magnitude, and is highly undesirable."

Our differences with Mr. Volpe have to do primarily with matters of timing, and of defining what constitutes a "radical, irreversible change." Mr. Volpe argues persuasively in his testimony that there is an urgent need for experimentation at the state level to clear up major uncertainties about the cost, workability and public acceptability of any new system. He concedes that the DOT does not have definitive answers to these questions, and says that "The experience of the state should have much to tell us about the most desirable final configuration of the motor vehicle reparations system."

Having established that major uncertainties exist, and that experimentation is needed to evolve a final configuration, very little credibility can be given to the DOT's speculations about what an "illustrative" or "ultimate" system might look like. It is inconsistent to call for experimentation, on grounds that the public itself must be allowed to participate in evolving the kind of system that will best serve its needs, and then to suggest a plan which goes beyond the point of no return in the very first stage of implementation.

In his testimony, Mr. Volpe seems to be suggesting that medical and rehabilitation losses be placed on a total no-fault basis immediately, and that the concept of driver accountability be virtually eliminated for such losses by prohibiting subrogation and by restricting payment of general damages to a very small number of serious cases - less than 5% of all auto crash injuries. Income losses and other injury-related economic loss payments would be shifted to a first-party, no-fault basis at a later date. Mr. Volpe indicated that the feasibility of shifting some or all of the losses now being compensated under the third-party property damage liability coverage is more doubtful, in part because there is little opportunity for cost savings in making such a switch, and in part because the DOT is doubtful that a total no-fault system for vehicle damage would be acceptable to the public.

As proposed in the Guaranteed Protection Plan, the Alliance believes it is desirable to take action immediately to guarantee prompt payment of basic benefits for both medical and wage losses - not medical losses only. But all the available evidence indicates that the public will insist on retaining reasonable payments for general damages to innocent crash victims, and will insist that the principle of driver accountability also be preserved. Our Plan provides an efficient means of determining driver accountability through subrogation and arbitration procedures.

We believe the Guaranteed Protection Plan offers crash victims better benefits, and would allow for a more orderly testing of public sentiment. The people affected by changes in the reparations system

need to be able to see and make judgments about what they would gain and lose as the balance is shifted toward greater use of no-fault coverages. Our Plan also will provide a more feasible means of testing to what extent the public is willing to forego compensation for personal injury damage not measured by out-of-pocket economic losses.

The Alliance has strong doubts about the public acceptability of shifting all vehicle damage to a no-fault basis, now or later. The motorist whose car is smashed by a negligent driver today is entitled to full payment for the repairs under the other driver's property damage liability coverage. But under a total no-fault system, the owner of the smashed car would not be able to collect anything from the negligent driver, and would have to pay the loss out of his own pocket or, at a minimum, pay the amount of the deductible under his own collision coverage.

One major reason for taking an evolutionary, experimental approach is the uncertainty that exists with regard to what Mr. Volpe calls the "unknown and essentially unknowable" price and cost implications of any major change in the system. The hazards of enacting major new benefit programs without such experimentation are well illustrated by the experience with Medicare. When Medicare was introduced in July, 1966, the cost of Part B was \$3.00 per month, with equal contributions by the U.S. Government. In April, 1968, the cost was increased to \$4.00 per month, and on July 1, 1970 the cost went up to \$5.30 per month. A further increase on July 1, 1971 brings the monthly premium to \$5.60 per month - an 86.7% increase in five years.

Medicare Part A also has been forced to pass higher costs on to senior citizens by increasing the deductible. It was \$40 originally, then was increased to \$44 in January 1969; to \$52 in January 1970; to \$60 in January 1971. That's a 50% increase in the deductible in five years. The Medicaid program suffered even more severe cost overruns, forcing Congress to cut back the scope of the program and take away benefits from certain groups who had previously been eligible for benefits.

We find it difficult to understand the total absence of any recommendation by the Department of Transportation for some form of federal action aimed at reducing the damageability of automobiles. As we have already noted, the DOT report itself clearly spells out the fact that substantial cost savings could be accomplished if the manufacturers were made to comply with certain minimum standards aimed at protecting the automobile itself. We believe that the Department's failure to recognize the need for a systems approach in the automobile insurance area is a major flaw in its proposed solution.

#### IV. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH MOTOR VEHICLE INFORMATION ACT

The American Mutual Insurance Alliance has supported state legislation which requires the automobile manufacturers to provide better automobile bumpers. Several legislatures are considering laws similar to the one enacted in Florida, requiring that cars sold after January 1, 1973 be equipped with bumpers capable of sustaining a 5-mile-per-hour impact damage and 10-miles-per-hour by 1975. The state of Maryland has already enacted somewhat similar legislation.

We believe, however, that minimum federal standards in this area would be desirable. Accordingly, we endorse federal legislation which would give the Department of Transportation authority to issue standards aimed at making cars more crashworthy.

We question, however, the desirability of Section 5(c) of S.976. This Section would require the Secretary to issue as soon as practicable after July 1, 1972 a standard requiring that all cars manufactured and sold after January 1, 1975, have energy-absorbing bumpers capable of withstanding front and rear impacts of 5 miles per hour into solid barriers, with minimum prescribed damage.

We find it very difficult to understand delaying action until 1975. In his floor statement on the bill, Senator Hart promised these standards by July 1, 1974. Postponing the effective date of the standards six months will mean that 5 million additional cars will find their way on the road with inadequate bumpers.

But even July 1, 1974 is a disappointing timetable. We know that the technology is at hand. Furthermore, the state of Florida in enacting legislation imposing standards by 1973 gave ample time to the manufacturers to meet production timetables.

Because the Federal authority is a pre-empting authority, this Section provides the manufacturers with a  $2\frac{1}{2}$ -year umbrella during which time they need to do nothing about providing adequate bumpers. This, in spite of the fact that GM has publicly announced its ability to meet a 5-mile-per-hour front and  $2\frac{1}{2}$ -mile-per-hour rear impact system by August 1973.

Each year's delay penalizes the insurance cost for a whole generation. The average life of a car is about 10 years. So at

best, it will not be until 1985 that all cars on the roads will be equipped with adequate bumpers if this Section is allowed to stand as it is.

Perhaps it might be best for Congress to spell out specifically what it wants these standards to accomplish and allow the technicians within the Department of Transportation to set the standards. What is most needed initially is a total vehicle design capable of withstanding rear and front impacts at 5 miles per hour into a solid barrier.

The need for Congress to spell out its will is important in view of the inadequacy of some of the standards that have been issued by the Department of Transportation as related to manufacturing and design. We find, for instance, that the recently issued bumper regulations are considerably weaker than they should have been even within the present authority of the Department of Transportation. These unnecessarily weak regulations circumvent the implied will of Congress to put into application as soon as possible the technology presently available to make cars safer than they have been to date.

We particularly support the requirement that auto manufacturers test their new models for crash resistance and publish the data so that potential purchasers can use this information in their buying decisions. Auto insurers thus would be encouraged to rate the various makes and models on the basis of their damageability and ease of repair as is now done in Sweden.

Last year, we testified before the Senate Antitrust and Monopoly Subcommittee against the reinspection of damaged vehicles before they are allowed to return to the road. We did not believe that there

was sufficient evidence that such reinspection was practical and doubted that the inspection system was sufficiently sophisticated to warrant the extra costs involved.

Today, we urge the enactment of Title V of S.976 which calls for both periodic inspections and reinspection of damaged vehicles. We believe that the new inspection techniques which are called for in the Act make an inspection and reinspection program feasible. Furthermore, we are convinced that the findings of the California Highway Patrol's investigation of fatal single-car crashes make such inspections and reinspections imperative.

This California study examined 409 fatal single traffic accidents for mechanical failure. Some of its more dramatic findings show that:

- 29% of all vehicles examined had one or more mechanical defects.
- About 6.4% of the vehicles examined had a mechanical defect which caused the accident.
- Considering only vehicles that had a defect, approximately 63% of the defects observed either caused or contributed to the accident in which the vehicle was involved.
- There were 172 defective mechanical systems located in 119 vehicles.
- The most commonly observed mechanical defect was in the braking system. These accounted for 35% of all defects found. Next were steering system defects which accounted for 26% of all defects.
- Older vehicles are more likely to be mechanically defective than the newer models.

- Almost all of the mechanical defects were attributed to wear and lack of maintenance rather than design or assembly flaws.
- Drivers of vehicles with mechanical defects are more likely to be under 20 and less likely to be over 60 than drivers of nondefective vehicles.

This study indicates that a reinspection program as called for in this bill would substantially reduce the safety hazard of mechanical defects in all vehicles.

We support the concept of separating the function of inspection from that of repair. We believe that technology is available which would allow diagnostic centers to detect mechanical flaws within a minimum of time and cost if the manufacturers built into their cars simple devices allowing for electronic monitoring of possible hidden defects.

Independent diagnostic centers are essential to practical reinspection programs.

We do want to sound a word of caution in regard to reinspections, however. We are certain that reinspections of damaged automobiles following crashes will turn up a whole lot of things wrong with the cars not necessarily caused by the accident. We suspect that many car owners will erroneously conclude that all repairs are due to the crash, and that the total cost of repair should be covered by the insurance contract. Insurers will not be entirely successful in sorting out the "maintenance" repairs from the crash damage. This will bring about additional insurance cost which, however, we believe would be justified by the ensuing increase in safety.

We also support the Uniform Title and Registration program covered under Title V of the bill. The National Automobile Theft Bureau reports that 1 out of every 97 cars on the nation's highways was stolen last year. This means that some 930,000 cars were stolen in the United States in 1970. Despite some progress in the fight against car theft, Gordon H. Snow, Chairman of the Bureau, reports that "the major part of combating theft rings right now is to find effective ways of preventing these criminals from registering these cars that they steal."

The Alliance has over the years urged the states to adopt the auto title and registration program of the National Committee on Uniform Traffic Laws and Ordinances. We believe that widespread state adoption of these laws has assisted in the recovery of stolen automobiles, thus reducing the cost of insurance to consumers.

Uniform title and registration in all states would greatly reduce the number of fraudulent registrations now being used by car-theft rings. In states which have adopted the Uniform Title and Registration program - 42 - stolen automobile losses are down, and 81% of the cars stolen have been recovered. By contrast, the recovery rates in the nontitle states is only about 50%. Obviously, a substantial reduction in thefts or a substantial increase in recoveries would be reflected by an appreciable reduction in premium rates for theft insurance.

We want to again stress the Alliance's basic endorsement of the purpose of S.976. Although our specific objections are substantive, we believe that with suitable amendments this bill can be of major assistance in bringing under control the excessively high price now paid by consumers for auto crashes and for the insurance coverages that pay for crash damage.

V. GUARANTEED PROTECTION PLAN: COMPATIBILITY WITH CONSUMER ATTITUDES

One of the major considerations involved in assessing the practical and political feasibility of any new automobile reparations system is public acceptability. How do American consumers feel about some of the ideas that have been suggested for changing the auto insurance system? Does the public consider fault to be an outmoded concept? How would accident victims feel about giving up compensation for general damages? What do consumers consider to be the real causes of rising auto insurance rates? What steps would they like to see taken to reduce cost? How do they feel about the considerations used in raising or lowering auto insurance prices for particular groups and individuals?

Any new auto reparations system must be based on satisfactory answers to these and other questions if it is to earn public understanding and acceptance. Yet the whole subject of public acceptability has been largely ignored in much of the public discussion of ways to reduce auto insurance costs and to reform the reparations system. As an advisory committee noted in a report for the Department of

Transportation: "The largest single gap in knowledge about the motor vehicle accident compensation system concerns the people in it and the impact of the system upon them. Their perceptions, beliefs, attitudes, and behaviors are the subject of much speculation, supported by very little factual data."

This uncertainty about public acceptability is one of the major reasons why an experimental approach is urgently necessary. It is easy enough to criticize the shortcomings of the present system. But there is no assurance that a radical switch to an untried new system would bring instant consumer satisfaction, either.

In designing the Guaranteed Protection Plan, the Alliance has conducted major research into the questions of public attitudes, and has tailored the various proposals accordingly.

All of the available evidence indicates that the American public attaches considerable importance to the concept of driver responsibility for injury done to another. There is a growing demand in our society for more - not less - personal accountability and responsibility. This was demonstrated in a major national study of the attitudes and feelings of people who buy auto insurance, conducted by Market Facts, Inc., largest consumer survey firm in the nation. Market Facts specializes in marketing research and in the measurement of consumer attitudes. Included among its clients are the Columbia Broadcasting System, Life Magazine, U.S. Steel, the Ford Motor Company, the U.S. Department of Agriculture, the Social Security Administration and the U.S. Department of Transportation.

1. Consumer Attitudes Toward Driver Responsibility for Accidents

To find out how people feel about the causation of auto crashes,

the interviewers in this survey asked a carefully drawn national probability sample of 1,494 car owners the following question:

"Let's talk for a minute about auto accidents and why they occur. Please think about your own experience and other accidents you know of - and consider whether these accidents could be avoided and how they could be avoided." Then respondents were given a card showing four alternative answers and were asked which statement came closest to how they feel. The overwhelming majority, more than 9 out of 10, believe that most auto crashes are someone's fault. More than half feel that almost all accidents are someone's fault, if the facts are carefully studied.

#### Driver Responsibility for Accidents

	Percentage of Respondents
Almost all accidents are quirks of fate and no one is to blame.	2.0%
Most accidents are unavoidable. They are unfortunate, but inevitable.	6.0%
Most accidents are the fault of drivers. Someone is to blame.	40.3%
Almost all accidents are someone's fault if the facts are carefully studied.	50.8%
No opinion,	.9%

It's interesting that Professors Keeton and O'Connell also feel that the fault concept cannot be eliminated from the auto accident reparations system. In their book, titled "After Cars Crash," they have these comments on the need to retain the concept of making the wrongdoer pay:

"The public believes in that principle strongly enough that they would seriously object to any system that tried to do away with it

completely. Many proposals that would have abolished altogether the role of fault in traffic cases just never got anywhere."

The Guaranteed Protection Plan is a reasonable balance between the objective of encouraging driver responsibility, and the objective of compensating accident victims promptly and fairly. All auto accident victims, except those which may be excluded as a matter of public policy, would receive prompt payment of their basic economic losses, and those who are injured by a negligent motorist would also retain the right to collect additional compensation from the wrongdoer. In addition, the consequence of the accident would be recorded against the insurance record of the negligent driver through subrogation procedures. This makes possible a rating system which brings to bear the financial consequences of a negligent act on the person who caused the loss.

2. Consumer Attitudes Toward Eliminating "Pain and Suffering" Payments To Reduce Auto Insurance Costs

Public attitude surveys and field experiments confirm that auto accident victims who have been injured by a negligent driver are unwilling to give up the legal right to collect for general damages, often inadequately referred to as "pain and suffering."

One of the major objectives in conducting the Market Facts survey was to find out whether consumers really understood what they were being asked to judge when they were asked questions about giving up payment for something called "pain and suffering." Several previous polls, including the one conducted by the University of Michigan for the Department of Transportation study, have used this term without any definition of what it means.

Respondents were first asked, "Sometimes we read about payments from auto insurance companies to individuals for 'pain and suffering. What does the term 'pain and suffering' mean to you? What do you think these payments would cover? Anything else?"

The answers were quite revealing. The public had a wide variety of definitions, many of them erroneous. Many others were vague and uncertain. These results cast serious doubt on the validity of any survey that uses the term "pain and suffering" without explaining what it means in the context of auto insurance claims.

After respondents had been given an opportunity to volunteer their personal definitions of the term, it was explained that "pain and suffering," in the insurance sense, refers to payments made for disability, disfigurement, permanent impairment of bodily functions, inconvenience, discomfort, and other damages that go beyond such tangible economic losses as doctor bills, hospital bills, and lost wages. .

This survey is believed to be the first study in which people were given a detailed explanation of what they would be giving up if no compensation were provided for "pain and suffering." Having been given this explanation, respondents were then asked to consider the following question:

"Suppose that the cost of auto insurance could be reduced somewhat by eliminating 'pain and suffering' coverage from all policies. Payments would be limited to covering 'economic' losses such as doctor bills, hospital expenses, and lost wages or salary. How would you feel about the idea of cutting insurance somewhat by eliminating 'pain and suffering' payments?"

-33-

About 65% opposed this idea and 27% favored it. Among respondents who had previously filed an insurance claim, more than 70% were opposed and 23% favored it.

Consumer Attitudes Toward  
Eliminating "Pain and Suffering"  
Payments to Reduce Auto Insurance Costs

	Total	Have Filed Claims	Never Filed Claims
Opposed	64.7%	70.2%	62.3%
In Favor	27.3%	23.1%	29.1%
Don't Know			
No Answer	7.9%	6.7%	8.6%
Number of Respondents	(1494)	(463)	(1024)

This opinion survey was corroborated by an actual field experiment conducted by the Alliance over a full twelve-month period in the Syracuse and Rochester areas of upstate New York, and in several counties on the western edge of Chicago.

The 16 participating companies, representing a broad cross-section of the auto insurance business, gave third-party bodily injury liability claimants a choice of how they wanted their claims to be handled. They could collect all of their medical expenses up to \$5,000, plus wage benefits equal to about 105% of their losses, to be paid promptly as the losses accrued. Or they could reject this alternative and pursue a regular liability claim.

Some 2,890 auto accident victims took a part in the experiment - 587 in Illinois and 2,303 in New York. The major finding is that, given a choice between the guaranteed benefits offer and the payment available under the existing auto liability system, 25% of the eligible claimants elected to accept the alternative benefits in the Illinois experiment and 15% elected the alternative benefits in the New York

experiment. (Exhibit 1)

We certainly do not consider these results the final, authoritative answer on public acceptance of any new system. We do think it indicates that people who have been injured by a negligent driver expect to be paid something above their medical and income losses. The more serious the injury, the less interested they were in settling on an economic loss basis.

Another insight on this issue comes from the experience of Preferred Risk Mutual, an Iowa company, which has added no-fault wage and medical benefits to its auto insurance policies. We are told by an official of the company that many of their policyholders decline to accept the first-party benefits and file a claim against the other driver, feeling that the driver at fault ought to pay for the damage.

### 3. Consumer Attitudes Toward A Total "No-Fault" Plan

The Guaranteed Protection Plan recognizes the fact that auto insurance policies sold today make extensive use of both "fault" and "no-fault" coverages. Both concepts would be retained. Payment of benefits to auto accident victims would be made considerably less dependent on fault determinations, but the idea of determining responsibility for the accident would be retained for purposes of insurance rate determinations and for payment of damages that go beyond basic economic losses.

The Plan is based on the premise that the public does not have as yet any well formulated opinion about the merits of a total no-fault automobile insurance system. Mr. Jay Schmiedeskamp, who helped conduct the University of Michigan study on public attitudes for the Department of Transportation, was perhaps more candid than he intended

-35-

to be when he told a CPCU Clinic in Des Moines that "Existing attitudes toward the no-fault plan can be summarized very quickly - namely that there aren't any because it doesn't exist." He went on to say that attitudes toward a no-fault plan might change if one were actually put into effect. (Please see Exhibit 2 for a critique of the DOT's Public Attitudes study.)

However, some insight into the current state of public opinion on this issue can be obtained from the Market Facts national survey. After testing the respondents to find out their understanding of the term "pain and suffering," interviewers asked the following questions:

"Now I'd like your opinion on a new idea that's being talked about these days. The idea is to change the auto insurance system so that a person in an accident would go to his own insurance company for payment as is done with fire and health insurance.

"The question of who was 'at fault' in the accident would not be considered in the payment of claims. Those responsible for an accident would have the same coverage and protection as those who were without fault.

"Under this new system, those in accidents would be reimbursed for expenses they incurred because of the accident, such as medical bills, repair bills and lost wages. However, under this new plan no payments would be made to anyone for 'pain and suffering' losses such as those we just talked about. Do you tend to favor or tend to oppose this new system?"

With this understanding of a "no-fault" plan, about 6 out of 10 consumers were opposed. Among those who have had experience with the

existing claims payment system, almost two out of three were opposed.

Consumer Attitudes Toward  
Total "No-Fault" Plan

Percentage of Respondents

	Total	Have Filed Claims	Never Filed Claims
Opposed	57.9%	65.5%	57.4%
In Favor	31.3%	26.5%	33.6%
Don't Know	9.0%	8.5%	9.2%
(Number of Respondents)	(1494)	(463)	(1024)

A followup question was then asked of those who were opposed, as follows:

"If the new plan cost less, would you favor it or still oppose it?"

More than 7 out of 10 of those who opposed the plan said they would still oppose it, even if it were to cost less. Thus, it is clear that most auto insurance buyers reject the no-fault principle as described to them in this survey - and even the prospect of lowering insurance costs would not change the minds of the majority of those in opposition.

4. Consumer Attitudes Toward Making Auto Insurance A "Last Resort" Coverage

Since some of the "no-fault" proposals that have been made called for offset of other available benefits, consumers surveyed in the Market Facts project were asked to evaluate that idea with this question:

"A different plan is to have auto insurance pay only for injuries after the injured person has used up any benefits he may have received

from his other insurance such as Blue Cross, union benefits, sick leave or salary continuation plans. Generally speaking, do you think such an idea would be a good idea or not too good an idea?"

About two-thirds of the consumers interviewed felt that such a plan would not be "too good an idea." Again, the opposition was noticeably stronger among those who have had direct experience with auto insurance claims. More than 70% of them turned thumbs down. It's interesting that about 6% were perceptive enough to point out that they might exhaust their sick leave or health insurance and then be left without coverage if they had a subsequent illness or injury not caused by an auto accident.

#### 5. Consumer Attitudes Toward Merit Rating

Although the Guaranteed Protection Plan does not deal directly with rating matters, the type of auto reparations system ultimately adopted will have major implications for rating. For example, it would be difficult if not impossible to devise an acceptable "merit rating" plan under a system based on a categorical rejection of the fault concept. Actuarially, a drivers' past accident record is a good indicator of his probable future accident frequency. And there is strong public support for the idea of charging higher rates for accident-prone drivers and lower rates for those who are safe drivers.

However, it is also clear that most people are adamantly opposed to being surcharged because of their involvement in an accident which was not their fault. Yet how is fault to be determined under a system which rejects the whole idea of fault. If proponents of total no-fault plans remain true to their convictions and ignore fault entirely, will the majority of safe drivers be content to pay surcharges when

they are involved in accidents caused by negligent drivers? And if the fault concept is smuggled back into the pricing of insurance, why is it not also a valid concept to use in the settlement of claims?

It's interesting to note that when the Market Facts interviewers asked car owners for any suggestions they may have as to the responsibilities of the insurance industry for reducing auto insurance costs, the most frequent suggestion volunteered was that insurance companies follow the "merit rating" concept, with high rates for poor drivers and lower rates for good drivers. About 1 out of 4 respondents volunteered this suggestion.

#### 6. Consumer Attitudes On the Causes of Rising Insurance Costs

It is clear from public opinion polls, newspaper articles and other evidence that the public is concerned over rising auto insurance costs. However, this concern is by no means concentrated on the bodily injury portion of the auto insurance premium. In fact, it appears that car owners have a surprisingly clear understanding of the factors that are driving up auto insurance costs - and some strong ideas on what should be done to solve what they perceive as the real problems.

To put the cost issue into perspective, Market Facts interviewers asked respondents to consider a "deck of shuffled cards," listing things which might or might not contribute to high auto insurance rates. They were asked to sort the cards into piles according to how they felt each thing contributed to high insurance rates, if at all. The four piles were labeled (1) a great deal, (2) somewhat, (3) a little, and (4) not at all.

By far the most important contributing factor, in the opinion of consumers, is "too many reckless drivers." Nearly 78% said this

contributes a great deal to higher insurance rates. Next in order of magnitude are three characteristics having directly to do with automobile design: high power, fragile bodies, and expensive-to-fix bodies.

Several additional questions were asked about auto design and about so-called "muscle cars," defined as cars that will accelerate to 60 miles per hour in less than 8 seconds. About 8 out of 10 respondents said cars should be designed to reduce repair costs, even if this makes cars less stylish in appearance. This strong feeling is especially significant in the light of other recent evidence that the high cost of auto repair has become the major factor pushing up the cost of auto insurance.

Factors Which Contribute "A Great Deal" to Higher Auto Insurance Costs

	Percentage of Respondents
Too many reckless drivers - irresponsible, lawless, or drunken drivers	77.9%
Cars with too much power and speed - new high acceleration "racing" models	61.9%
Car bodies which are easily damaged - fragile, not sturdy	57.4%
Car designs which are expensive to fix because of "sculptured" bodies, unitized construction, etc.	53.4%
High prices from repair garages	48.0%
Too many unskilled drivers - poorly trained or inexperienced	50.2%
Cars designed with ornamental bumpers that don't prevent damage	51.1%
Small dents and minor damages cost too much to repair	46.9%
Too much congestion on roads - too many cars	46.4%

(continued)

**Factors Which Contribute "A Great Deal" to Higher Auto Insurance Costs (continued)**

	Percentage of Respondents
Traffic laws not enforced enough - too few arrests; sentences are too light	31.6%
Roads not designed for safety; not properly marked, lighted, repaired, etc.	29.9%
Procedures of automobile insurance companies are inefficient	17.1%

In summary, the Guaranteed Protection Plan has been designed so as to recognize what is now known about public attitudes toward the major issues involved in reforming the auto reparations system. More important, the Plan has been designed so as to permit an orderly public test of consumer reactions under actual operational conditions. It is not an irreversible change, as would be the case in a switch to a total no-fault system. Policymakers would retain many different options for modifying, speeding up, slowing down or altering the direction of change on the basis of actual experience under the new system. This would permit the public itself to help evolve the kind of auto reparations system which it feels will best serve its own needs and purposes.

#### VI. UNIFORM MOTOR VEHICLE INSURANCE ACT

The merits of the Guaranteed Protection Plan are perhaps best illustrated by comparison of its features with those of the so-called Uniform Motor Vehicle Insurance Act, now under consideration by this committee.

The Guaranteed Protection Plan represents a responsible, evolutionary approach to auto reparations reform - one that allows the affected public and policymakers alike to test out the workability

of the Plan. By contrast, the Uniform Motor Vehicle Insurance Act is a risky leap into the dark, representing a drastic, irreversible change in the system. In the course of our critique we will point to a number of shortcomings in both the philosophy and practicality of the Plan. We believe it would create inequities so severe as to make it unacceptable to the public.

### 1. Unresolved Problems

One of the most serious shortcomings of the proposal is its incompleteness. The bill draft leaves many questions unanswered and many serious problems unresolved.

The public is not being well served by being left in the dark about these unresolved issues. There is wide appeal in a plan which seemingly promises something for everybody with no controversy. But it is the obligation of this committee not only to examine these promises - which have been prominently publicized in the press - but also to examine the unresolved problems created by this proposal.

Specifically we think people have a right to know what their rates would be for the compulsory coverages, what additional coverages would be needed and what they would cost, what costs they would have to pay out of their own pockets, which claims would be paid and not paid under the proposed new form of insurance. People also have a right to know about the uncertainties, delays, frustrations, inequities, controversies and litigation which this Plan would generate.

For example, our claims people foresee major difficulties and legal controversy in determining how much to pay large numbers of auto accident victims under this Plan. The bill provides for income replacement in an amount equal to 85% of the accident victim's monthly

earnings at the time of injury, or \$1,000, whichever is less, for as long a period (up to 30 months) as the injury causes the inability to engage in gainful activity substantially the same or similar to that engaged in prior to the injury. The bill further provides that if the injured person worked substantially the whole year immediately preceding the injury, the income loss will be based on those previous earnings. If the injured person had just taken a new job, the loss would be computed on the basis of what a person doing similar work would have received during the immediately preceding year.

Several aspects of this issue are troublesome. One is that 55% of the persons injured in auto crashes are not wage earners at the time of the accident. These include minor children, housewives, students and retired persons. Many of these persons expect to enter or re-enter the work force at some future date, or to earn supplementary income in some way. But under the Uniform Motor Vehicle Insurance Act there is no way they can collect for any harmful effects an auto injury may have on their future earning capabilities unless they are totally disabled or can demonstrate that they have suffered permanent partial disability exceeding 70%.

The inequity is even more immediate and glaring in the case of the unemployed. Let's take the case of the thousands of aerospace workers now temporarily out of work, or the workers who were furloughed during the 1970 business slowdown and have not been rehired, or the construction workers who are seasonally unemployed. Under this federal bill, such persons would not be eligible for any wage benefits on a no-fault basis. Nor would they have a right to seek a tort recovery

for future wage losses unless they suffered permanent disability exceeding 70%.

This raises additional unresolved problems. How is "disability" to be defined? Does it mean industrial disability - i.e., impairment of the injured person's ability to perform gainful employment? Or is it limited to actual wage impairment? Or does it mean medical disability - i.e., physical impairment without reference to what this may mean in terms of the person's earning capacity? Does it include mental and emotional disability, or not?

Assuming a definition is devised, how is the extent and duration of disability to be measured? In the absence of any provision in this bill, these issues presumably would have to be resolved in the courts. It is interesting to note that in Texas, where workmen's compensation claims are court-administered, the judiciary is burdened with several times more workmen's compensation disputes than auto liability claims.

Serious problems of malingering would be likely to arise under a system which withholds compensation for serious bodily harm unless the injured person can prove that the damage is permanent and has resulted in more than 70% disability. Such problems are a major cause of concern under the workmen's compensation system, despite the many limits and safeguards built into that system but omitted from the proposed Uniform Motor Vehicle Insurance Act.

Such safeguards include administrative procedures and tribunals for determining the degree and duration of disability, and the active involvement of an employer in investigating the accident and in following through with the medical treatment, rehabilitation and

return to work of the injured employee.

Similar uncertainties and unresolved problems exist with regard to the definition of "disfigurement," and how it is to be measured.

## 2. The Seriously Injured Victim

Much of the publicity for the Uniform Motor Vehicle Insurance Act focuses on the plight of the seriously injured crash victim. Proponents have severely criticized the present system for its alleged failures to provide adequate compensation for such persons, and have promised that their plan would provide "almost total compensation."

Both the criticisms and the promises are somewhat inaccurate and overstated.

For example, in a news release issued February 24, 1971, Senator Hart said flatly that the "present system...provides auto victims with only 16% of their out-of-pocket losses." Subsequent inquiry reveals that this statistic is based on mismatching data from two different studies, and deals solely with the lifetime economic losses estimated for a tiny group of persons suffering permanent and total disability. It is not, as the news release erroneously implies, an indication of how the present system performs for all auto accident victims, or even for all of those defined as "seriously injured."

The DOT's study of seriously injured crash victims likewise contains a misleading picture of how the auto reparations system performs. The document titled "Economic Consequences of Auto Accident Injuries" is erroneously thought to show that some 500,000 persons categorized as "seriously injured" in 1967 auto crashes recovered only half of their economic losses.

But a radically different picture emerges when the data are examined in detail. In the first place, the survey did not involve 500,000 persons. It involved a sample of 1,376 persons, which the report itself concedes to be unrepresentative of the auto accident population generally. The document also is replete with warnings about the "speculative nature" of the projections of future economic losses (Vol. 1, p. 24), the "substantial" errors in classification (Vol. 1, p. 24), the "arbitrary" criteria used in defining serious injury (Vol. 1, p. 17), and the flat admission that "...the study does not provide reliable estimates of aggregates" (Vol. 1, p. 15). Yet all of the DOT's highly publicized conclusions about the amount of economic loss incurred by auto accident victims, and about the amounts of compensation received from various sources, are based on the "aggregates" which the report says are unreliable.

Even if the figures are taken at face value, a detailed study of the tables leads to different conclusions than those which have been widely publicized. It reveals that nearly all of the so-called "uncompensated compensable economic loss" stems from a small core of catastrophic situations. (See Exhibit 3.)

The startling fact is that 121 persons accounted for 94% of the uncompensated economic losses which the DOT subsequently blew up into billion dollar estimates purporting to measure the "compensation gap." This small group - the "catastrophic few" estimated to have incurred losses exceeding \$25,000 - represents only 8.8% of the DOT's real-life sample of 1,376 crash victims, and fewer than 1% of all auto crash victims.

This means the other 91.2% of the seriously injured group were compensated for all but 6% of their economic losses, as a group.

These findings have great significance in assessing both the present reparations system and the various reforms being proposed.

For example, most of the uncompensated economic loss reported for the "catastrophic few" consisted of future wage losses extending far beyond the 30-month cutoff period found in the Uniform Motor Vehicle Insurance Act. This means the proposed federal bill will fall far short of providing "almost total compensation" for the group of crash victims which accounts for 94% of all the DOT's estimated "uncompensated compensable losses."

The Act proposes to deal with this problem by preserving the right of tort recovery for survivors in death cases and for persons who are more than 70% disabled. But this is rendered largely meaningless by other provisions prohibiting the states from requiring drivers to carry any form of liability insurance to pay for such losses. The high-risk drivers most likely to cause such injuries are the ones least likely to voluntarily purchase liability insurance if existing state financial responsibility laws are abolished, as Senator Hart proposes.

Moreover, the person who has suffered a serious crash injury - a spinal cord injury, for example - will be faced with a cruel choice under this federal bill. Its provisions create a serious disincentive for rehabilitation in the cases most desperately needing rehabilitation care. Many months normally elapse in such cases before the degree of disability is stabilized. In the meantime, the injured person will be left in uncertainty as to whether he will be able to pursue a tort recovery. Should he retain an attorney, and begin preparing his case while witnesses are available, or wait to see if his disability

will exceed the 70% level? In some states, the statute of limitations on filing a claim or a lawsuit may run out before he knows the answer. This gives the injured person a strong financial incentive to regard himself as permanently and totally disabled, and to be classified as such as quickly as possible. How many seriously injured persons, facing an uncertain future, can afford to do otherwise - particularly if he has a family dependent on him for support?

The Uniform Motor Vehicle Insurance Act also creates serious inequities for the much larger group of seriously injured crash victims who suffer permanent disabilities below the 70% level. These unfortunate victims would receive no compensation at all for going through life with some rather serious impairments.

Under the disability rating systems commonly in use today a person may suffer loss of limbs, serious loss of bodily function, deformity, recurring pain and other severe personal damage without being considered 70% disabled. For example, the amputation of an arm is considered a 60% disability of the body as a whole under the American Medical Association's "Guides to the Evaluation of Permanent Impairment." Partial paraplegia also carries a 60% rating so long as the person is able to walk without braces and has complete bowel and bladder control, despite the fact that he may be unable to pursue his previous occupation. In the case of workers who earn their living by manual labor or other jobs requiring physical exertion, disabilities well below the 70% level can mean a drastic change in income for the rest of their lives, in addition to the personal anguish imposed on them and their families.

Or consider another type of disability rating under the Labor

Code of the State of California. California's "Schedule for Rating Permanent Disabilities" rates a complete loss of speech as a 50% disability. The loss of sense of taste and smell is considered a 10% disability. The loss of a thumb and all fingers on one hand is a 55% disability.

There is no completely satisfactory answer to this problem. But at least the Guaranteed Protection program offers everyone who has been injured as a result of someone else's irresponsibility an opportunity to recover full economic losses and general damages for the harm done to the quality of life he may expect as a result of a permanent injury. Under the Uniform Motor Vehicle Insurance Act, large numbers of these permanently impaired victims would not even be entitled to full recovery of their economic losses.

### 3. General Damages

It is argued that general damages should be excluded from compensation because they are subjective in nature and are not susceptible of objective measurement in dollars. Yet the same thing is true of a great many things in this world. How much is a man's time worth, and how is its value determined? Why do we pay higher wages for overtime, night work and holidays, and how is the differential arrived at? How do we determine the value of a piece of real estate condemned for a highway?

All of these things are subjective in nature. Yet we manage to translate them into dollar amounts by a process of bargaining and compromise. Our society not only is capable of translating subjective values into dollars - it insists upon it, and considers it one of the distinguishing features of a democratic society. We do it every time

we negotiate a wage settlement, sign a contract, buy a house or hire the neighbor's kid to mow the lawn.

Auto accident victims insist upon it also. People who have been injured by a negligent driver expect to get paid something for their trouble, pain and inconvenience. Those who have suffered a permanent impairment such as loss of speech or all of the fingers of one hand are even less likely to be satisfied with being paid nothing more than their net economic losses.

#### 4. Delay

One of the major promises made for the Uniform Motor Vehicle Insurance Act is that it would provide prompt payment. However, the feature which makes other benefit sources pay first would tend to create considerable delay in payments by the auto insurer. This would result because the auto insurance policy would be intended to pay only those amounts left unreimbursed after all other benefits had been offset. This would require that the auto insurer determine not only the existence of other collateral benefit sources, but also find out to what extent they had overlaps, deductibles, coinsurance provisions, dollar limits, time limits, exclusions and other features affecting the amounts payable. Accident victims usually would be unable to provide such information until other benefits had been actually received. With the auto insurer being "last in line" to pay, any delays in the payment of benefits by other sources would tend to delay the payment of auto insurance.

Moreover, the bill provides no safeguards to prevent concealment of collateral sources, tax deductions, second jobs and other information which would have to be taken into account in settling claims.

We rejected this approach in structuring the Guaranteed Protection Plan for several reasons. First of all, it is unfair to the prudent man who has provided other forms of protection for himself and his family. Why should this man be denied payment under his auto insurance policy, while the person who has not obtained other coverages would collect? In the case of employee benefits such as group health insurance and wage continuation plans, spokesmen for organized labor regard these union negotiated benefits as compensation received in place of additional wage income. For this reason, total no-fault plans have run into stiff opposition from labor groups in several states as soon as they took a close look at the plans and found out what it would do to their members.

Quite aside from the attitudes of labor and management, why should other benefit systems - private or public - be saddled with the burden of subsidizing highway accidents? As a matter of public policy, motorists as a group ought to pay their own way for the accidents and injuries they caused. We believe it is in the public interest to keep these auto accident costs visible, instead of hiding them by passing on a large part of the expense to taxpayers and purchasers of other insurance coverages.

#### 5. Who Is Left Out?

In numerous hearings over the past three years, and in the steady barrage of press releases issued in behalf of this proposal, major emphasis has been placed on the fact that some auto accident victims fail to receive any compensation under the auto bodily injury liability coverage, and that seriously injured accident victims are sometimes not compensated in full for all of their economic losses.

Careless use of such terms as "the present system" and "the fault system" seem almost calculated to mislead the casual reader into thinking that auto accident victims have no other source of recovery under the present auto insurance system other than by proving that they were totally innocent and the other driver was totally at fault.

In fact, the bodily injury liability coverage is not designed to cover all injuries occurring on the highways. For example, it is not designed to cover the approximately 25% of all auto crashes involving single vehicles, except to the extent that guest passengers have a cause of action against the negligent driver of the car in which he was riding. A majority of these single vehicle crashes involve only the driver, and of course the liability coverages are not designed to pay for such cases.

However, about 70% of private passenger vehicle owners carry medical payments insurance, which pays on a first-party, no-fault basis, even in single vehicle accidents and in cases where the injured person was at fault. Vehicle owners also can purchase first-party, no-fault collision insurance to cover any damage to their own cars, regardless of fault. Thus it is misleading to imply that "the present system" is incapable of providing compensation for crash losses.

If critics of the present system insist on looking only at the statutory coverages, then it is fair to ask how many accident victims would not get paid under the statutory coverages which they propose. Under the Uniform Motor Vehicle Insurance Act, very large numbers of auto accident victims would receive nothing at all from the compulsory personal injury coverages. Nobody would collect for damage inflicted on his automobile under the statutory coverages. Many of those who

have wage continuation plans, sick leave or nonwage income wouldn't collect anything for their lost work time. Those who have health insurance or other medical benefits wouldn't collect from their auto insurance for these expenses either, unless these collateral sources specifically provided that the benefits are secondary to auto insurance.

No doubt it will be argued that these losses are covered by other benefit systems. But the same argument can be made today. The point is, both the present statutory auto insurance coverages and those proposed under this federal act are designed deliberately to leave out certain categories of claimants - and the group left out is much larger under the federal proposal than under the present system.

The Guaranteed Protection Plan would provide broader protection than either the present system or Senator Hart's proposal. It would cover a far larger number of accident victims, and provide benefits more promptly, than the auto insurance coverages specified in the proposed Uniform Motor Vehicle Insurance Act.

#### 6. Coverage Gaps

Another major flaw in the Uniform Motor Vehicle Insurance Act is the provision which would strike down existing state financial responsibility laws. The Plan not only does not cover property damage - it also prohibits states from requiring or strongly encouraging drivers to carry property damage liability for the damage they may inflict on other vehicles. As a practical matter, this means that people whose cars are smashed by negligent drivers are unlikely to be able to collect.

Owners of other property such as houses, commercial property

also would find it much more difficult to collect from negligent motorists than is the case today under state financial responsibility requirements.

Third, people who suffer catastrophic harm at the hands of negligent motorists are likely to find their right to sue largely meaningless, since there is no requirement or sanction on vehicle owners to insure against this liability. All insurance companies would be required to offer such residual liability coverages to their policyholders, but it is quite likely that a high percentage of the most accident-prone segment of the driving population would not purchase it if existing financial responsibility laws are abolished.

#### 7. Is Negligence Still Relevant?

If the Congress enacts the Uniform Motor Vehicle Insurance Act, it will be saying as a matter of public policy that a negligent driver no longer is responsible for the injury and damage he inflicts on other people. The idea of abandoning responsibility is based in part on the assumption that auto crashes are really nobody's fault - that they are more or less random events, the inevitable consequence of a motorized society. But there is strong evidence to the contrary. A startling high percentage of all serious auto accidents involve flagrant driver negligence.

Improper driving is a factor in about 9 out of 10 fatal and injury-producing accidents, according to reports of state and city traffic authorities.

Drinking is the dominant factor in highway fatalities. Studies published by the DOT indicate that drinking plays a part in at least half of the 55,000 annual highway deaths - and in more than 800,000 injuries a year.

Additional evidence on the role of driver negligence is found in a report prepared by the National Highway Accident and Injury Analysis Center of the United States Department of Transportation. Out of 217 accidents studied, 612 factors were identified as contributing to the occurrence of the accidents. These included vehicle defects, roadway defects, bad weather and a variety of other factors.

But 422 of the 612 "accident causation" factors involve human error. And a high percentage of these accidents involve flagrant driver negligence.

In 104 cases, for example, the driver was intoxicated or had been drinking.

In 81 cases, the driver was speeding or going too fast for conditions.

In 19 cases, the driver went through a red light or stop sign.

In the light of all the evidence that has been gathered, the American Mutual Insurance Alliance believes that driver behavior is still a highly relevant factor to the innocent victims who are maimed and to vehicle owners whose cars are smashed as a result of someone else's carelessness. The Guaranteed Protection Plan is based on the premise that driver negligence is still relevant, and must be taken into account to some degree in any reparations system likely to win public approval.

#### 8. Efficiency of the Auto Insurance System

The Alliance agrees with proponents of various auto insurance reform plans that one objective of reform should be to make the auto insurance system more efficient, and to return a greater percentage of the insurance premium dollar to accident victims.

Such an assumption of federal control would be justified only if the states had utterly failed in their job, and there was a reasonable expectation that federal regulation somehow would be immune from the same failings. We see no credible evidence that either of these conditions prevail. There is nothing in the history of the federal regulatory system to instill confidence that federal regulation of insurance would be, on the whole, more efficient than the present state regulatory system. The shortcomings of federal regulation are well documented in a recent book by Pulitzer Prize-winning author Louis M. Kohlmeier, Jr., titled the Regulators. As the jacket succinctly puts it, the book "sheds new light on how the federal regulatory agencies have failed in their purpose - to protect the American consumer." We note that Senator Hart, the principal author of the Uniform Motor Vehicle Insurance Act, has strongly endorsed this book.

The Congressional Record is full of official and unofficial criticism of federal regulatory agencies for their dilatory procedures, their inflexibility, their lack of independence and competency. As a consequence, the public has suffered and the affected industries have suffered. There is at least a reasonable presumption that hide-bound federal regulation is a major contributor to the financial plight of the nation's railroads and airlines and the problems of power and energy shortage with which we are now confronted.

Insurance remains one of the most diverse businesses in the nation. In most respects, it is still a local business, built on local bases and serving local needs. The Alliance believes that the regulation of insurance must recognize and respond to this diversity.

Some critics have spoken of diversity in regulations among the 50 states as though it were prima facie evidence that something is wrong. It is, in fact, evidence that the states are carrying out their intended and constitutionally guaranteed function of serving the diverse interests of their own citizens. To argue that there is something abhorrent, per se, about differences in laws among the various states is to quarrel with the whole concept of federalism and the legitimacy of individual states having independent powers and responsibilities.

The Guaranteed Protection Plan advocated by the Alliance would provide a compatible, rational system in which differences in benefit levels and other aspects of the auto reparations system could be readily accommodated and reconciled as among states.

We take specific note of the fact that an arm of the National Legislative Conference, an affiliate of the Council of State Governments, already has taken action to draft model legislation that would provide a guideline, subject to necessary state variations, for the auto reform plan proposed under the Concurrent Resolution now before this committee.

#### 10. Legal and Constitutional Problems

The proposed Uniform Motor Vehicle Insurance Act raises a number of legal and constitutional issues.

Is it permissible to abolish the right to sue for a bodily injury, and substitute a compulsory requirement that vehicle owner purchase insurance to protect himself?

In the DOT report titled "Constitutional Problems in Automobile Accident Compensation Reform," Professor C. Dallas Sands of the

University of Alabama Law School examined the constitutional issues that might be involved in reform of the auto accident compensation system through federal legislation, and concluded that such legislation might well run afoul of the 7th Amendment, which preserves trial by jury under common law.

In any event, the proposal would be certain to generate a substantial amount of legal controversy and litigation, both to define what the statute means and to resolve continuing disputes among the parties to an action and their insurers.

#### 11. Access to Insurance

One of the politically popular features of the Uniform Motor Vehicle Insurance Act is the provision that would require auto insurers to accept all applicants for coverage, provided they have a valid drivers license and are willing to pay the premiums. The proposal also would prohibit cancellation except for loss of a driving privileges or nonpayment of premium. This presumably is intended to do away with the need for the existing automobile insurance plans, which provide a source of insurance for motorists who are having difficulty in obtaining coverage in the voluntary market.

However, the actual consequences of such a law are likely to be very different than the objectives which the authors of this proposal have in mind. The most likely result would be to increase the cost of insurance for the vast majority of drivers who now enjoy preferred rates, since companies which attempted to set their rates at a low level attractive to such drivers would be inundated by high risk drivers. Such a plan also would create chaos in the market place, as companies sought to avoid attracting the attention of people

from areas known to produce excessive losses. In order to correct these dislocations, the federal regulator would have to become more and more involved in the operational details of marketing insurance - including the appointment of agents, the nature of the advertising done, the availability of visible sales offices, the mailing lists used by those companies using direct mail solicitations, etc.

If the objective is to keep the cost of automobile insurance at an "affordable" level for drivers with above average loss exposure, it would appear that such drivers have more protection under the existing regulatory setup than they would have under the one contemplated in this bill. In New York, for example, where auto insurers are now permitted to use competitive rating for their voluntary business, the rates for drivers insured in the automobile insurance plan remain under a so-called "prior approval" arrangement. Although drivers insured in the Plan are charged higher rates than those available in the voluntary market, there is a deliberate element of subsidy built into the setting of rates for these high-risk drivers. In other words, they do not pay their own way. Under the Uniform Motor Vehicle Insurance Act, insurance companies presumably would be free to charge these high-risk drivers rates commensurate with their actual loss experience, so that their premiums would be even less "affordable" than is presently the case.

The Guaranteed Protection Plan deals with the problem of insurance availability in a more reasonable fashion. It calls for expansion of the present automobile insurance plans so as to guarantee reasonable limits of protection for both liability and other auto insurance coverages to every licensed driver.

Concrete plans for accomplishing this objective were outlined

by the National Industry Committee on Automobile Insurance Plans consisting of representatives of the American Mutual Insurance Alliance and the other two major insurance trade associations, at the 1969 annual meeting of the National Association of Insurance Commissioners in Philadelphia. The necessary changes are now being put into effect by the various states, either by action of Automobile Insurance Plan governing committees or by legislation.

The Alliance supported these changes and, in addition, would support a program which extends beyond the recommendations of the NIC (which include liberalized eligibility requirements, optional medical payments, physical damage coverage, an installment payment plan, and the new name, "Automobile Insurance Plan.") We also support offering 50/100/25 bodily injury and property damage liability limits of protection and more prompt access to coverage under the plans. However, where higher limits are provided, small insurers without adequate reinsurance arrangements should be protected by the mandatory pooling of limits over the financial responsibility limits.

The insurance industry also has improved the availability of coverages by restricting the right to cancel policies. Since 1967, Alliance member companies have agreed not to cancel any private passenger automobile policy except for nonpayment of premiums by an insured, or suspension or revocation of a driver's license or registration. The Alliance Board of Directors voted to seek legislative enactment of "noncancellation laws" restricting the cancellation of private passenger auto policies, except for the two reasons cited above.

The principal stock and mutual rating bureaus have had in effect

-61-

for the past six years a program of voluntary restrictions on the right of members and subscribers to cancel private passenger automobile liability policies. As of January 1, 1968, the right to cancel was further restricted to just two allowable reasons: non-payment of premium, or loss of driving privileges. At the same time, the guarantee against cancellation was extended to other coverages, such as collision, fire and theft.

To make such guarantees effective for all policyholders, some 38 states have now enacted laws providing statutory restrictions on the right of companies to cancel auto insurance policies. The Alliance and other responsible segments of the industry are working to enact similar laws in the remaining states.

#### 12. Changes in Rating Procedures

Proposals for changes in rating procedures under the Uniform Motor Vehicle Insurance Act would not provide the public with meaningful price information, as its authors apparently assume.

As nearly as we can determine from the somewhat vague and confusing description contained in the bill, it is contemplated that the Secretary of Transportation would publish each company's loss experience in great detail, along with the premiums being charged for each category of driver, rating territory, vehicle type and use, and type of insurance coverage.

The trouble is, this type of data has no statistical validity on an individual company basis when subdivided into so many categories. The loss experience would fluctuate so greatly - from one company to another and for the same company at different time intervals - as to be meaningless and misleading for consumers.

This would be especially true of smaller companies. Small companies also would have more difficulty in adjusting to the new system, particularly if - as seems likely - they would be required to perform for themselves many of the services now performed by rating bureaus.

The result very likely would be to promote the growth of large companies at the expense of their smaller competitors, thereby lessening competition and promoting economic concentration of power in an industry which has remained highly diversified and highly competitive up to now.

#### VII. THE FEDERAL GOVERNMENT'S ROLE IN AUTO REFORM

The Alliance believes that the Federal Government has a major role to play in reducing the excessive losses now occurring on the highways, and in bringing about an improved compensation system for automobile accident victims. Indeed, the Federal Government already has made major contributions in these areas.

The massive study conducted by the Department of Transportation, plus the hearings held by this committee and other committees of Congress, have made a major contribution to the efforts to reform the automobile accident reparations system. This research, plus the impetus provided by federal interest in this subject, seems likely to assure that the states will move promptly to conduct the necessary experimentation and evolution of reforms in the reparations system. The Alliance has knowledge of reform legislation pending in at least 35 states. Several of these states are considering alternative reform plans.

The Alliance believes the Federal Government has a more active role to play in the reduction of highway losses - through funding

of research, the funding of safety programs such as the current alcohol countermeasures program of the DOT, and through the vigorous application of vehicle standards designed to reduce the grossly excessive loss being generated by low-speed damage to vehicles and the unnecessary injuries to vehicle occupants. In this connection, the Alliance supports the pending legislation which would give the Department of Transportation specific authority to promulgate standards relating to vehicle damage as well as occupant safety. We also support the concept of rating cars on the basis of their damageability and repairability.

#### VIII. CONCLUSION

The problems generated by automobile crashes are far more complex than was generally realized when the reform issue first came to general public notice two or three years ago. We believe the ensuing research, debate and soul searching has been productive, and has produced something close to a consensus on the steps that must now be taken to bring about a reformed system and to bring under control the excessive losses. The Alliance has been privileged to play a major role in this search for reform. We pledge to you and to the public our continued efforts to accomplish those objectives.

APPENDICES

- Exhibit 1 - Two-Thirds of Your Auto Insurance Premium Goes for  
Vehicle Damage Coverages
- Exhibit 2 - Guaranteed Benefits - An Experiment in Auto  
Insurance Reform
- Exhibit 3 - Critique and Analysis of DOT's "Public Attitudes  
Toward Auto Reform"
- Exhibit 4 - Critique and Analysis of DOT's "Economic Consequences  
of Auto Accident Injuries"
- Exhibit 5 - Chart Showing Percentage of Premium Dollar  
Returned in Benefits and Services, 1969

Exhibit 1.

**Two-Thirds of Your Auto Insurance Premium  
Goes for Vehicle Damage Coverages**

	<u>Total Premium</u>	<u>Cost of Vehicle Damage Coverages</u>	<u>Vehicle Damage % of Total Premium</u>
Jacksonville, Fla.	\$208	\$131	63%
New York (Queens)	\$506	\$366	72%
Trenton, N.J.	\$228	\$152	67%
Philadelphia, Pa.	\$501	\$346	69%
San Francisco, Calif.	\$479	\$346	72%
Minneapolis, Minn.	\$261	\$175	67%
Chicago, Ill.	\$479	\$351	73%
Detroit (Semi-Suburban)	\$260	\$180	69%
Columbus, Ohio	\$226	\$155	69%
Seattle, Wash.	\$221	\$138	62%
Raleigh, N.C.	\$167	\$117	70%
Indianapolis, Ind.	\$314	\$249	79%
Portland, Ore.	\$278	\$188	68%
Milwaukee, Wis.	\$246	\$145	59%
Honolulu, Hawaii	\$236	\$152	64%
Juneau, Alaska	\$310	\$257	83%
Hartford, Conn.	\$370	\$241	64%
Wilmington, Del.	\$250	\$196	78%
Manchester, N.H.	\$227	\$155	68%
Providence, R.I.	\$293	\$201	69%
Dallas, Texas	\$263	\$203	77%

Vehicle damage coverage includes property damage liability limits of \$5,000 per accident, \$50 deductible collision and full coverage fire, theft and comprehensive physical damage insurance.

Total premium includes the above physical damage coverages plus bodily injury liability coverages of \$25,000 per person and \$50,000 per accident, plus uninsured motorist insurance and \$1,000 per person medical insurance.

Rates shown are for an adult driver with a medium-priced car of the current model year. It is assumed he has a good driving record and does not drive his car to work. (Source: Mutual Insurance Rating Bureau.)

## GUARANTEED BENEFITS

---

### An Experiment in Auto Insurance Reform

	<u>Page</u>
Summary of Findings.....	1
Background and Objectives.....	3
Description of the Experiment.....	4
Results of the Experiment.....	6
Appendix.....	9
A. Conduct of the Experiment	
B. Additional Data	
C. Description of Benefits	

#### Published By

AMERICAN MUTUAL INSURANCE ALLIANCE  
20 N. Wacker Drive, Chicago 60606

#### Participating Companies

Allstate	Home Insurance Company
American Mutual Liability	Insurance Company of North America
Chubb & Son, Inc.	Kemper Insurance
Continental Insurance Companies	Liberty Mutual
Country Mutual	National Grange Mutual
Economy Fire & Casualty	Nationwide Insurance
Employers of Wausau	Sentry Insurance
Great American	Utica Mutual

**SUMMARY OF FINDINGS**

Given a choice between Guaranteed Benefits and the benefits available under the existing auto liability system, 25 per cent of claimants elected to accept Guaranteed Benefits in the Illinois Experiment and 15 per cent elected Guaranteed Benefits in the New York Experiment.

Persons who had more serious injuries and economic losses were likely to opt for a liability settlement rather than the Guaranteed Benefits offer. The larger the claim, the more pronounced this tendency became.

Claimants who consulted attorneys were much less likely to accept Guaranteed Benefits than those who did not. However, it is not known whether the decision resulted from the attorney's advice or whether the claimant's decision to consult an attorney was, in itself, an indication that he or she had in mind a settlement larger than that provided under Guaranteed Benefits. Retired persons, housewives, the self-employed and rural residents were more likely than other claimants to elect Guaranteed Benefits.

No definite conclusions can be drawn from this experiment regarding the possibility of savings from adoption of the Guaranteed Benefits concept.

#### BACKGROUND AND OBJECTIVES

The purpose of the Guaranteed Benefits Experiment was to test the reaction of automobile bodily injury liability claimants to this particular alternative method of paying benefits.

At the time the experiment was initiated, in 1968, there had been extensive criticism of the automobile liability insurance system. Numerous proposals had been made for changes in the system which would eliminate some of the uncertainties of a liability claim. The Guaranteed Benefits Experiment was designed to offer liability claimants an opportunity to exchange these uncertainties for the assurance of a known recovery. The benefits were structured so as to offer the injured person a combination of payments which, in most instances, would pay all of his medical expenses, wage losses and other out-of-pocket expenses, plus some additional benefits for permanent impairment or wrongful death. These benefits were to be paid regardless of the fact that the claimant may have had other sources of recovery such as health insurance or wage continuation benefits.

Companies participating in the experiment wanted to know whether claimants having bodily injury claims against their policyholders would be willing to accept these benefits, offered promptly and on a guaranteed basis, or whether they would choose the less certain but potentially higher settlements available if they could prove that the other driver was at fault.

In addition, the companies hoped to gain insight into the cost implications of a Guaranteed Benefits system.

## DESCRIPTION OF THE EXPERIMENT

The Guaranteed Benefits Experiment was conducted during a one-year period in portions of New York and Illinois. The following 16 company groups participated in one or both portions of the experiment in cooperation with the American Mutual Insurance Alliance:

Allstate  
 American Mutual Liability (New York only)  
 Chubb & Son, Inc.  
 Continental Insurance Companies  
 Country Mutual (Illinois only)  
 Economy Fire & Casualty (Illinois only)  
 Employers of Wausau (New York only)  
 Great American (New York only)  
 Home Insurance Company (New York only)  
 Insurance Company of North America (New York only)  
 Kemper Insurance  
 Liberty Mutual  
 National Grange Mutual (New York only)  
 Nationwide Insurance  
 Sentry Insurance  
 Utica Mutual (New York only)

In Illinois, the experiment covered Kane and DuPage Counties, and for some company groups, portions of Lake and suburban Cook Counties. All are in the Greater Chicago metropolitan area, although the western portions of the test area are rural.

The New York portion covered Monroe and Onondaga Counties, including Syracuse and Rochester and their surrounding suburbs plus rural portions of the two counties. Some 3.5 million persons reside in the two test areas.

Claims personnel of the participating companies made Guaranteed Benefits offers to auto accident victims who resided in the test areas and who had valid bodily injury liability claims against policyholders of participating companies. The program did not involve the sale of a new or different product to the insurance-buying public. It was strictly a claims-handling experiment involving the offer of an alternative form of settlement to persons presumed to be entitled to a liability recovery.

Eligible claimants were offered up to \$12,500 in Guaranteed Benefits payments. They could collect up to \$5,000 for medical expenses incurred within one year of the accident. They also could collect up to \$7,500 in additional benefits for wage losses and other damages, including physical impairments. (See Appendix C for details on the benefits).

Ground rules of the experiment called for the insurer of the driver responsible for the accident to contact claimants as quickly as possible and offer to pay their medical expenses up to the \$5,000 limit, without red tape as the medical expenses were incurred. The injured person did not have to make any promises or sign a release to receive these medical benefits.

In addition, the claimsman handling the case offered the injured person a choice of accepting an additional package of optional or elective benefits in exchange for an oral agreement that the amount was satisfactory and he would not make any further claim against the other driver. These additional benefits covered such items as loss of wages, inability to perform usual services such as housework or child care, permanent bodily impairment, and the general inconvenience and pain associated with the injury. A survivor's loss benefit was provided for those who qualified for such benefits under state law. Claimants had 15 days to choose or reject the Guaranteed Benefits offer.

Property damage claims were handled under regular claims-handling procedures in all instances.

### RESULTS OF THE EXPERIMENT

Some 2,890 auto accident victims took part in the Guaranteed Benefits Experiment - 587 in Illinois and 2,303 in New York.

In essence, these claimants were asked to evaluate the attractiveness of a guaranteed payment covering their full economic losses, payable as the wage losses and expenses accumulate, in contrast with the possibility of obtaining a greater recovery by pursuing a regular liability claim.

The principal finding is that given a choice between the Guaranteed Benefits offer and the payment available under the existing auto liability system, 25 per cent of eligible claimants elected to accept Guaranteed Benefits in the Illinois Experiment and 15 per cent elected Guaranteed Benefits in the New York Experiment.

Since the experiment was conducted by claims personnel of the participating companies, it inevitably gauged the reaction of such personnel to an alternative compensation method within the environment of the present tort-liability system. The degree of acceptance varied considerably among individual claimmen and this was reflected in the success they had in obtaining acceptances of the Guaranteed Benefits offers. In addition, the experiment had to compete to some extent with other claims-handling programs being heavily promoted by participating companies, notably some sophisticated forms of "advance payment" settlements.

Because of these factors, it is reasonable to assume that the percentages of acceptance obtained in the experiment represent minimum figures.

The following considerations appear to have been the major factors affecting claimant decisions to accept or reject Guaranteed Benefits offers (See Appendix B for tables 1-4):

1. The involvement of an attorney prior to the claimant's decision almost always led to a rejection of the Guaranteed Benefits offer. Roughly one-quarter of claimants were not consulted directly by the insurer - i.e., first notice of the claim to the insurer came from the attorney himself. In an additional one-third of the cases (proportions vary somewhat between New York and Illinois), the claimant retained an attorney after the Guaranteed Benefits offer was made but before a decision was made to accept or reject it. However, it is not clear whether the attorney influenced the decision or whether the claimant's decision to retain an attorney was, in itself, an indication that he or she had in mind a settlement larger than the Guaranteed Benefits offer. (See Table 2)
2. The size of the claim was an important determining factor. The larger the claim, whether measured by economic loss, the potential liability recovery or the amount available under Guaranteed Benefits, the less likely the claimant was to accept the Guaranteed Benefits offer. (See Table 3)
3. Money, as expected, was an important consideration. The greater the contrast between the claimant's perceived potential liability recovery and the amount he expected to receive under Guaranteed Benefits, the less likely the claimant was to accept Guaranteed Benefits. (See Table 4)

4. The Claimant's economic station in life was of major significance. Claimants without earnings such as retired persons and housewives were more apt to elect Guaranteed Benefits than those earning an hourly wage or salary income. This may be due to the fact that Guaranteed Benefits provides an inducement in the form of minimum disability benefits for those with little or no wage loss (Guaranteed Benefits pays \$9 per day for persons unable to do housework or attend school). The self-employed also had higher than average tendency to accept Guaranteed Benefits. (See Table 3)
5. Claimants residing in rural areas were more likely to accept Guaranteed Benefits than claimants residing in urban areas. (See Table 3)

No definite conclusions can be drawn from this experiment regarding any possible savings that might result from the adoption of Guaranteed Benefits or some modification of the concept. Some savings appear to have been realized in the experiment in the minority of cases where the claimants elected to accept Guaranteed Benefits. This is based on claims personnel estimates of what would have been paid in those same cases on a tort liability basis (See Table 4). However, it is evident that offers were not made in all instances where liability was not clear. Savings with respect to those who elect Guaranteed Benefits could be offset or more than offset by additional costs for those who might accept Guaranteed Benefits in situations of uncertain liability, in the absence of any other cost-reducing measures.

## CONDUCT OF THE EXPERIMENT

The Guaranteed Benefits Experiment was based on research conducted over a period of six years by the American Mutual Insurance Alliance, a national trade association of more than 100 mutual companies writing such coverages as auto and fire insurance, workmen's compensation and general liability. However, companies participating in the field testing of the concept represent a broad cross-section of the entire auto insurance business.

Committees representing member and nonmember companies planned and carried out training sessions for claims personnel in Chicago and in Rochester. A Technical Subcommittee designed the forms and procedures used to gather the pertinent statistics. Local claimsmen filled out the forms on each accident and claimant. A short form was used where injuries were minor. Demographic information collected on this form was limited. A long form was prescribed for the more serious cases.

All forms were forwarded to the Alliance, and were checked for accuracy, consistency and compliance with the rules of the experiment, to the extent that such checking was possible. Coding sheets were prepared from the detail on the forms and were submitted to the Judson Branch Center of the Allstate Insurance Company in Menlo Park, California. Here the data were key-punched and processed on the computer.

Tabulations in accordance with schedules prescribed by the Technical Subcommittee were prepared as print-outs from the computer and furnished to the Subcommittee. The Subcommittee reported that "It is clear from the print-outs and from discussions with the persons responsible for preparation and checking of forms, that 100% accuracy was not obtained with respect to the detail or the compliance with experiment rules. Nevertheless the Subcommittee and Staff have examined the results (as furnished) carefully and feel that the conclusions set forth herein are fully warranted."

## Appendix B

## ADDITIONAL DATA

The tables contained in this section are based on the tabulations described in Appendix A.

Table 1

## ACCEPTANCE OR REJECTION OF GUARANTEED BENEFITS

<u>Location</u>	<u>Accept GB</u>	<u>Reject GB</u>
Illinois	145 (24.7%)	442 (75.3%)
New York	335 (14.6%)	1,968 (85.4%)

Table 2

## CHIEF FACTOR AFFECTING CLAIMANT DECISION

Cases With & Without Attorney Compared with Over-All Acceptance Ratio

<u>Illinois</u>	<u>Persons Involved in Decision</u>	<u>New York</u>
222%	Self	253%
100%	(Over-All Average)	100%
25%	Attorney	37%

A technique of analysis was used in Tables 2 and 3 to highlight the more significant factors affecting claimant decisions to accept or reject the Guaranteed Benefits offers. The average acceptance ratio is expressed as 100%. Table 2 indicates that when the claimant made up his own mind he was more than twice as likely to elect Guaranteed Benefits as the average for all claimants. On the other hand, when an attorney was involved in the decision-making process, the claimant was only about one-third as likely to elect Guaranteed Benefits as the average. As noted in the Summary of Findings and in item #1 on page 7, however, the claimant's decision to retain an attorney in the first place may indicate that he

had already decided to seek compensation in excess of the medical expenses, wage losses and other benefits available under Guaranteed Benefits.

In assessing both Tables 2 and 3, it should be noted that some of the percentages are based on very limited samples, particularly with respect to Illinois data. For example, in the Illinois data for Table 2, only 17 persons made their own decisions; the figure is 66 for those consulting an attorney.

Table 3

OTHER MAJOR FACTORS AFFECTING ACCEPTANCE OR  
REJECTION OF GUARANTEED BENEFITS

<u>Illinois</u>		<u>New York</u>
	<u>Size of Loss</u>	
165%	\$1 - \$40	226%
100%	(Over-All Average)	100%
83%	\$41 and Over	82%
	<u>Economic Station</u>	
135%	Retired, Housewives & Self-Employed	218%
100%	(Over-All Average)	100%
88%	Salary or Hourly Wage Earner	84%
	<u>Urban-Rural Environment</u>	
140%	Rural - Kane County	---
100%	(Over-All Average)	---
67%	Urban - Cook County	---

Table 4

## COST COMPARISONS

Actual and Estimated Settlements for GB and Liability Cases

Illinois	<u>GB Accepted: Average GB Settlement</u>	<u>Estimated Liability Value of Same Cases</u>	<u>Difference in Value</u>
	\$241	\$304	-\$63
	<u>GB Rejected: Av. Liability Settlement</u>	<u>Estimated Value of same Cases Under GB</u>	<u>Difference in Value</u>
	\$992	\$384	+\$608

---

New York	<u>GB Accepted: Average GB Settlement</u>	<u>Estimated Liability Value of Same Cases</u>	<u>Difference in Value</u>
	\$438	\$499	-\$61
	<u>GB Rejected: Av. Liability Settlement</u>	<u>Estimated Value of Same Cases Under GB</u>	<u>Difference in Value</u>
	\$1,017	\$426	+\$591

Table 4 illustrates the fact that acceptance of Guaranteed Benefits was higher in the small-value cases. It also shows that when Guaranteed Benefits was elected there was an estimated savings averaging about \$60 per claim, as compared with what the settlement would have been on a tort-liability basis. On the other hand when Guaranteed Benefits was rejected the claimant received, on the average, between two and two-and-a-half times as much as if he had accepted Guaranteed Benefits.

It seems clear that claimants, or those upon whom they rely for advice, can identify those situations in which the tort-liability system offers a greater reward. In general, they are the larger cases, involving more serious injuries and economic losses.

DESCRIPTION OF BENEFITS - APPENDIX C

## Here's How the Plan Works

Under the Guaranteed Benefits plan now being tested in Illinois and New York, auto accident victims who have valid bodily injury liability claims against policyholders of the participating insurance companies are being offered the benefits outlined in the six payment provisions below.

The over-all limit per injured person is \$12,500, including \$5,000 in medical benefits plus \$7,500 under one or a combination of all other categories. The medical benefits will be paid automatically to all eligible persons. The additional benefits will be paid to those persons who elect to accept them and who promise orally to make no further claim against the other driver.

### 1. Medical Benefits

Eligible persons will be paid up to \$5,000 for their reasonable and necessary medical expenses incurred within one year from the date of the accident, including up to \$1,000 for funeral expenses. These benefits will be paid even if the injured person has accident and health or hospitalization insurance. However, those persons who are entitled to auto medical payments and Guaranteed Benefits from the same insurance company will collect the auto medical payments first, then collect under the Guaranteed Benefits plan for any additional medical expenses up to \$5,000.

### 2. Basic Disability Benefits

Basic disability payments are intended to sustain the injured person and his family during the period of disability. Payments start as soon as the injured person elects to accept the Guaranteed Benefits option. They continue on a regular basis for as long as 12 months, and are pegged at 70 per cent of the claimant's usual wage. The maximum benefit per week may not exceed 125 per cent of the average weekly wage in the injured person's state of residence, and the total amount paid under this provision may not exceed \$7,500.

### 3. Loss of Services Benefits

This is an alternative to Basic Disability Benefits for persons who are generally not wage earners. Those who choose this alternative may collect 70 per cent of the cost of hiring someone to perform

their usual services during the disability period. Their inability to perform these services must be medically certified. A minimum payment will be made even if the family manages to get along without hiring anyone. Payments may continue up to one year or \$7,500.

### 4. Supplemental Disability Benefits

When the injured person's disability payments end, he or she receives an additional lump-sum payment amounting to 50 per cent of all the money already received under either the Basic Disability Benefits or the Loss of Services Benefits. This lump-sum payment will not be less than \$35 for each week the injured person was receiving disability payments. This extra payment is to compensate accident victims for the inconvenience and discomfort associated with their involvement in an accident. The combination of the disability payments plus this lump-sum benefit will more than reimburse most claimants for their actual losses. And all of the benefits are tax-free.

### 5. Medical Impairment Benefits

A lump-sum payment may be made for permanent disabilities such as loss of a finger. Guidelines devised by the American Medical Association are used to determine the percentage of impairment remaining after the injury has healed. The amount due will be figured by applying this percentage to a \$7,500 limit. Payments already made under the Supplemental Disability section will be deducted, and no payment will be made for impairments which amount to less than \$100.

### 6. Survivor's Loss Benefits

If an injured person dies within one year of the accident as a result of injuries received in the accident, the other driver's insurance company will pay a lump sum of \$5,000 for the benefits of persons who qualify for the survivor's benefits under state law. This payment is for the loss of income or services of the decedent. The \$5,000 will be paid in addition to any other Guaranteed Benefits which may have been paid, except that the total of all Guaranteed Benefits may not exceed the over-all limit of \$12,500.

The over-all limit of \$12,500 per person for all Guaranteed Benefits combined is sufficient to cover the losses sustained by all but a small percentage of auto accident victims. The few persons whose bodily injury losses greatly exceed this figure presumably will seek larger settlements under traditional claims procedures, if they can prove that the other driver was at fault.

Critique and Analysis  
of  
Public Attitudes Toward Auto Insurance  
  
A Report of the Survey Research Center  
Institute for Social Research  
The University of Michigan  
  
to  
  
The Department of Transportation

Background

On March 28, 1970, the DOT released its report on a survey of public attitudes toward auto insurance.

The survey was done by the Survey Research Center of the University of Michigan and is one component of the Auto Insurance and Compensation Study being conducted by DOT. The report is based on data collected through personal interviews with 3,075 respondents who were mostly heads of families in a national cross-section sample of dwellings, excluding Alaska, Hawaii, and D.C. Most of the analysis concerns the 2,534 families who owned cars.

Two samples of approximately equal size were drawn; one was interviewed between the middle of May and middle of June and the second between August 7 and September 10, 1969. Modern probability sampling with callbacks and household designation was used, thereby minimizing the bias of population restriction - i.e. the size and character of the population to be sampled. Even the use of modern probability methods, however, result in about 15% of the population being excluded (e.g., those institutionalized, hospitalized, homeless, transient, the military, mentally incompetent, etc.) plus those who refuse to answer; are unavailable after their callbacks, or have moved to no known address.<sup>1</sup>

Moreover, use of interviews and questionnaires (the basic tools of 90% of social science research) can introduce a foreign element into the social setting they would describe. They can create as well as measure attitudes.<sup>2</sup> The data collection can stimulate an interest the respondent did not previously feel - thereby distorting the results.

Webb lists the following sources of invalidity connected with the use of all interviews and questionnaires:

1. The probability of bias due to respondent's awareness of his subject status. If people feel they are being "tested," the method of data collection stimulates an interest the subject did not previously feel, the measuring process may distort the experimental results.
2. The respondent's awareness of the interview process produces differential reaction (role selection) involving not so much dishonesty but rather a specialized selection from among the many "true" selves or "proper" behaviors available in any respondent.

- 
1. Stephen, F.F. and McCarthy, P.J. Sampling Opinions, New York: Wiley, 1958. Also, Ross, H.L. "The Inaccessible Respondent: A Note on Privacy in City and Country," Public Opinion Quarterly, 1963, 27, 269-275.
  2. Webb, et al. Unobtrusive Measures: Nonreactive Research in the Social Sciences, Rand McNally and Company, Chicago, P. 1.

3. Measurement as a change agent. This is the "preamble effect" where attitudes created in one part of the interview are carried over into another section.
4. Tendency of respondents to endorse a statement rather than disagree with its opposite and a preference for strong statements.
5. Error from investigator. The interviewer is an important source of cues to the respondent, and he helps to structure the demand characteristics of the interview. There is strong evidence that a substantial number of biases are introduced by the interviewer, such as interaction of age, sex, etc.
6. Change in the research instrument (the interviewer). In other words, to what degree is the interviewer the same research instrument at all points of the research? He may read "heavier" a second time. His skill may increase. He may be better able to establish rapport. He may loaf or become bored. He may have increasingly strong expectations of what a respondent "means." There is, therefore, always the risk that the interviewer will be a variable fitter over time and experience.

These biases are common to all interview and questionnaire survey techniques. Some of these, plus others peculiar to the DOT survey which we will enumerate later, strongly influenced certain key findings presented in the report.

#### Index of Satisfaction And Dissatisfaction With Automobile Insurance

As its starting point, the DOT study utilized an Index of Satisfaction to determine the level of satisfaction and dissatisfaction with the auto insurance system among respondents surveyed. This is a valid method which is used to control variance of data and which the researchers felt would give more satisfactory indications of underlying attitudes than do responses to single questions or to one generic question.

According to the Index, 63% of respondents were satisfied to various degrees and 21% dissatisfied, with 16% neutral. Or to put it another way, 79% were not dissatisfied with auto insurance. This index took into account such "dissatisfiers" as delayed claim payment, cost of auto insurance, cancellations and nonrenewals and general dissatisfaction with the system.

These results were contrasted with responses recorded toward the end of the interview, after various features of the present auto insurance system were discussed with the respondents, which indicated that more people would be in favor of a "no-fault" system of insurance than in favor of the prevailing "fault" system.

Specifically, 44% opted in favor of claiming damages from their own insurance company only and receiving no compensation for pain and suffering, irrespective of which party was at fault. On the other hand, 36% opted for the current system. These percentages were based on an Index of Insurance System Preference utilizing responses from the last three questions in the questionnaire which purported to measure specific and general public attitude towards a "no-fault" system.

The important question to ask is this: What caused the alleged "change in attitudes"? There is strong internal evidence in the survey questionnaire that the manner in which the "no-fault" questions (A67, A68 and A69) were structured strongly biased the response elicited.

In the last analysis, all data must be elicited with questions. Simply put, the nature of the questions will determine what kind of data you get from respondents.<sup>3</sup> Questions A67, A68 and A69 are particularly open to serious question since they are either incomplete or erroneous in describing the system about which they seek to measure attitudes. Moreover, they are of the structured variety which presents the respondent with fixed response alternatives. Structured questions are considered to be potentially more reactive, i.e., prone to bias than the "free response" type which were used in finding out what people thought about the present system.<sup>4</sup>

A close examination of the structure of these three key questions used to construct the Index of Insurance System Preference shows the following:

Question A67 describes for respondents a "no-fault" system which "in case of an accident your losses, including damage to your car, would be paid by your own insurance company, no matter whether you or the other driver were at fault." The question is misleading in that it does not indicate that major total no-fault proposals being put forth require the buyer to carry collision insurance to pay for damage to his car that would have been covered if a negligent driver damaged his car under the present system. The abolishment of 3rd-party property damage liability is in fact one of the big "cost-saving" features of no-fault plans like AIA and Stewart-Rockefeller and Keeton-O'Connell.

Question A68 offers the respondent a choice between two kinds of auto insurance (fault and no-fault) which would cost about the same and asks which he prefers. However, in describing the choices, "pain and suffering" was not adequately defined, the fact that no-fault involves collateral source offset was not mentioned, and how damage to vehicles would be handled was not mentioned. Also, in describing the fault system, mention of any 1st-party coverage was explicitly excluded.

---

3. Backstrom, Charles H., and Hursh, Gerald D., Survey Research; Northwestern University Press, 1963, pp. 66-110.

4. Webb, et al., p. 33.

Moreover, it's unfortunate that the choice was between fault and total no-fault, since there are other plans (such as the Alliance's Guaranteed Protection Plan) which seek to lessen dependency on fault and make other beneficial changes in the system without scrapping it completely. The researchers, as many research organizations do, could have consulted industry sources on structuring the questionnaire without compromising its integrity. It's unfortunate they did not and that an opportunity to gain valuable insights into consumer attitudes was wasted. However, we do get a glimpse of what the consumer wants in the way of change, since those respondents who perceived a need for change proposed a reduction of dependency on fault and wider use of the comparative negligence law approach.

Question A68a asks for a preference between a no-fault system which costs less than the present system, and the present system, both as described by the interviewer. Again, the answer would be highly biased since the key questions leading up to this choice were erroneous, misleading or both. Also, it was strongly implied that no-fault definitely would cost less.

Question A69 asks if respondents would opt for cost reductions if pain and suffering were eliminated without describing just what pain and suffering is. The question also implies that no-fault would automatically take care of vehicle damages without collision insurance being carried. Also conspicuous by its absence is any statement that would have given respondents a chance to comment on their attitudes towards no-fault with its "benefits" as described, but at a higher price - although some respondents did volunteer the information that they thought no-fault would be more expensive than fault.

To summarize, the questions which determined the Index of Insurance System Preference were poorly structured, misleading or incomplete. Two key elements - pain and suffering and vehicle damage - were mishandled in their presentation. These strong internal biases, plus other internal and some external ones we will indicate later, probably account more for the so-called change in attitudes of respondents from the ones they felt at the beginning of the interview. It seems then that the internal invalidity associated with the interview process set into motion attitude changes (between beginning and end of interview) which would not have otherwise occurred. That "change" did occur is probably, in the words of Webb, a "measurement-produced artifact,"<sup>5</sup> and therefore invalid.

The damage done to the survey's credibility in the areas mentioned also extended to giving the impression to young drivers that no-fault would result in lower premiums and to insureds who had been cancelled that no-fault would somehow assuage the market problem. (See DOT Study pp. 80-81.) Significantly, these groups (34% of young drivers and

---

5. Webb, et al., p. 12. Also Crespi, L.P. "The Interview Effect on Polling." Public Opinion Quarterly, pp. 948, 12, 99-111.

66% of these cancelled who found difficulty obtaining new coverage) expressed strong favor for a change in the system, probably in the mistaken impression that no-fault would solve their particular problems.

One of the most interesting insights into public attitudes toward the present system, and the various improvements that might be made, is found in the supplementary tables on page 125. When respondents were asked an open-ended question ("In your opinion, is there a need to change this system? In what ways?"), more than two-thirds - 68% of all respondents - did not express a preference that the system be changed.

Among those who indicated a need for change, 10% indicated some degree of interest in lessening dependence on fault. As the document itself puts it, "modify so that everyone collects regardless of who is at fault, or so that dependency on proving fault is reduced." (Emphasis added.)

Another 10% said, "improve the way in which fault is determined and/or compensate claimants in (inverse) proportion to their degree of fault in an accident." Four percent said "let each company take care of its own insured," and the remaining answers were scattered.

This is hardly a ringing endorsement of an all-out change to a no-fault system. It does appear to support some change toward lessening dependence on fault, and toward adoption of the comparative negligence concept in determining amounts of compensation.

Critique and Analysis of  
"Economic Consequences of Automobile Accident Injuries"  
(DOT Serious Injury Study)

I. SCOPE OF THE STUDY

The foreword to this two-volume study describes it as "the most comprehensive and carefully conducted study of the plight of people injured by motor vehicles ever produced." And the news release issued at the time the study was released on April 28, 1970, said it "represents approximately 500,000 fatalities and seriously injured persons."

In fact, the scope of the study is considerably more narrow than these statements would imply. This is not a study of 500,000 persons, nor even 5,000. The billion-dollar estimates, and the thousands of persons listed under various categories, are in fact based on interviews with only 1,376 accident victims or their survivors.

Moreover, this is not a sample of all people injured in motor vehicle crashes, as the title seems to indicate. The study is confined to a tiny segment of the auto accident universe - those persons who incurred medical expenses exceeding \$500, were hospitalized for two weeks or longer, missed three or more weeks of work or, if not working, missed six weeks or more of normal activity. This group of "seriously injured" persons represents about 10% of all persons injured in vehicle crashes, and has characteristics which differ markedly from motorists in general and from the other 90% of auto crash victims. For example, from other DOT reports we

know that more than half of all drivers killed in auto crashes are drunk. Males between the ages of 15 and 44 constituted 20% of the population at the time of the survey, but incurred 39% of the serious injuries and fatalities. And a cross-check with other DOT studies and insurance industry data indicates this tiny group had available far less insurance protection of all kinds than the population generally. (It is quite possible, of course, that the interviews simply did not obtain accurate information on the insurance they had, in which case the estimated payments they received are grossly understated.)

For all of these reasons, and others, the "Economic Consequences" study does not present a valid picture of how the auto accident reparations system performs, nor how well auto crash victims fare as a total group. As will be demonstrated below, the study does not even present a valid picture of what happens to the small group of seriously injured persons represented in the sample of 1,376.

## II. ACCURACY OF THE DATA COLLECTED

Public statements made by the DOT staff and others concerning this study have emphasized the finding that persons killed or seriously injured in 1967 highway crashes had aggregate "compensable" economic losses of \$5.1 billion, and received only \$2.5 billion in aggregate compensation from all sources. Similar comparisons are made for numerous sub-categories within the 1,376-person sample.

All of these comparisons - which have been widely published and cited as evidence that the present auto insurance system is a failure - depend on the accuracy of both the raw data collected and the aggregates

based upon it (and blown up to 370 times life-size).

Yet the report itself is replete with warnings about the "speculative nature" of the projections of future losses (Vol. 1, p. 19), the "substantial" errors in classifying the various individuals (Vol. 1, p. 24), the "arbitrary" criteria used for defining serious injury (Vol. 1, p. 17), and the candid admission that "... the study does not provide reliable estimates of aggregates" (Vol. 1, p. 15).

In short, the DOT chose to publicize the least reliable findings, and to attribute to them a significance which goes far beyond the level of confidence expressed about them by the professionals who actually conducted the research.

#### 1. Verification of Losses and Payments

Confidence in the entire study is further undermined by the fact that the basic raw data was derived from largely unverified estimates of losses and payments stemming from accidents that occurred more than two years prior to the interviews. In this connection, it is interesting that the U.S. Public Health Survey tosses out all data based on events more than 90 days old, having found that recollection of details beyond that point are less reliable. As the report notes in the foreword, these are "events the respondents surely would rather relegate to the recesses of their minds."

In view of this, it is surprising that there was so little verification of the actual losses and payments received, even though most respondents gave permission for such verification. For example, no attempt was made to verify with insurance companies

the amounts paid to these crash victims under various coverages. Nor was any attempt made to determine whether there was full reporting of amounts received from all sources. Information used to estimate wage losses would appear to be particularly vulnerable, since only 208 replies were received from employers, and only 57 of those replies were actually used.

This criticism does not in any way imply that respondents deliberately falsified their replies. It simply calls into question the decision to accept as completely accurate the respondents' estimates of the economic losses they incurred and the exact amounts of compensation they received from 7 or 8 possible sources, for auto crashes which occurred more than two years previously.

## 2. Under-Reporting of Benefits Available

Independent evidence suggests that the reporting of compensation received from these multiple sources was substantially understated.

For example, the DOT data indicate that about 65% of the respondents were covered by medical and hospital insurance, and only 51.4% of the seriously injured collected something from medical insurance. But the Health Insurance Institute reports that 85% of the U.S. population is protected by one or more forms of private health insurance.

Only 54% of the respondents reported they had auto medical payments coverage, and only 37.9% indicated they were paid anything from this source. But the DOT study of public attitudes indicates that 78% of the motoring population have auto medical payments coverage - a figure which jibes with insurance industry estimates.

Only 62% of the fatalities in this study had life insurance, according to the DOT, whereas a nationwide survey for the Institute of Life Insurance indicates 71% of Americans own at least one type of life insurance.

Only 29% of the respondents said they collected anything under the auto collision coverage, but the DOT public attitudes study shows that 77% of the motoring public has such protection.

These discrepancies may be explained in part by the difficulties which many respondents may have had in accurately recalling events that occurred more than two years previously. Some part of the problem may also be due to the DOT staff's lack of understanding of the various forms of insurance and what they cover. For example, this report shows no benefits paid under the auto medical payments coverage for instant death cases, apparently because the staff was unaware that the auto medical payments coverage pays funeral expenses.

### 3. Statistical Credibility of the Study

Another major problem affecting the credibility of the findings has to do with the statistical credibility of the detailed comparisons among various subcategories. The overall sample of 1,376 is relatively small to begin with. When this sample is subdivided into dozens of smaller categories, the numbers of persons falling into many of these categories are so low as to have very low credibility. Yet this study blows up the results obtained from subsamples as small as 13 persons into national projections, and draws conclusions based on such data.

In all fairness, it should be noted that the professionals

who did the statistical work pointed out that the margin of error increases enormously as the sample is subdivided. But the fact that the figures are multiplied by 370 tends to conceal just how thin some of the data really are. And those who are using this study to castigate the present auto reparations system have tended to ignore the cautionary statements and qualifications buried in the 677 pages of this study, and have accepted at face value the damaging "findings" which suit their purposes, whether they have any statistical validity or not.

### III. INTERPRETATION OF THE DATA

Several questionable assumptions are implicit in the public statements made about the findings of this study, and in the basic conception of the report.

#### 1. Definition of "Compensable Economic Loss"

The lead line of the news release issued upon publication of this study says, "Auto insurance repaid only one-fifth of the \$5.1 billion compensable losses resulting from deaths and serious injuries in 1967 automobile accidents...".

Obviously, the definition of "compensable economic loss" is critical, since this is the yardstick used to measure both the performance of the auto insurance system and how the injured persons fared.

In devising this yardstick, the DOT deliberately excluded all compensation for disfigurement, permanent impairment, suffering and other general damages that go beyond direct economic losses such as medical expenses and lost wages.

On the other hand, the DOT assumed that all economic losses sustained by heads of families as a result of auto crashes should be fully reimbursed for the rest of their lives - a goal never attempted nor achieved by any compensation system in our society, including those established by government for persons injured in public employment and for persons killed or injured in military service.

The DOT's public statements about this study also implies that the auto insurance system ought to be expected to absorb all of the losses defined as "compensable" by the DOT, regardless of the circumstances of the accident, the economic status of the injured person, the availability of other sources of compensation and the existence of statutory provisions such as wrongful death limits.

These are, at best, questionable assumptions.

Moreover, in preparing its unverified estimates of future wage losses, the DOT made no adjustments for income taxes, remarriage of widowed spouses, the decreased life expectancy of seriously impaired persons, the expenses that the persons would have incurred in earning that future income, nor a number of other factors which might reasonably be considered in determining which losses should be "compensable."

who did the statistical work pointed out that the margin of error increases enormously as the sample is subdivided. But the fact that the figures are multiplied by 370 tends to conceal just how thin some of the data really are. And those who are using this study to castigate the present auto reparations system have tended to ignore the cautionary statements and qualifications buried in the 677 pages of this study, and have accepted at face value the damaging "findings" which suit their purposes, whether they have any statistical validity or not.

### III. INTERPRETATION OF THE DATA

Several questionable assumptions are implicit in the public statements made about the findings of this study, and in the basic conception of the report.

#### 1. Definition of "Compensable Economic Loss"

The lead line of the news release issued upon publication of this study says, "Auto insurance repaid only one-fifth of the \$5.1 billion compensable losses resulting from deaths and serious injuries in 1967 automobile accidents...".

Obviously, the definition of "compensable economic loss" is critical, since this is the yardstick used to measure both the performance of the auto insurance system and how the injured persons fared.

In devising this yardstick, the DOT deliberately excluded all compensation for disfigurement, permanent impairment, suffering and other general damages that go beyond direct economic losses such as medical expenses and lost wages.

On the other hand, the DOT assumed that all economic losses sustained by heads of families as a result of auto crashes should be fully reimbursed for the rest of their lives - a goal never attempted nor achieved by any compensation system in our society, including those established by government for persons injured in public employment and for persons killed or injured in military service.

The DOT's public statements about this study also implies that the auto insurance system ought to be expected to absorb all of the losses defined as "compensable" by the DOT, regardless of the circumstances of the accident, the economic status of the injured person, the availability of other sources of compensation and the existence of statutory provisions such as wrongful death limits.

These are, at best, questionable assumptions.

Moreover, in preparing its unverified estimates of future wage losses, the DOT made no adjustments for income taxes, remarriage of widowed spouses, the decreased life expectancy of seriously impaired persons, the expenses that the persons would have incurred in earning that future income, nor a number of other factors which might reasonably be considered in determining which losses should be "compensable."

## 2. Interpretation of Averages

One of the most widely-quoted "findings" of this study is that, "On the average, about half of the total personal and family economic loss was recovered" from any source. But a detailed study of the tables reveals the startling fact that only 121 persons (out of the total sample of 1,376) accounted for 94% of the gap between the DOT's estimate of "compensable" economic loss and the compensation reported by respondents.

In short, nearly all of the "uncompensated" loss stems from a small group of catastrophic situations - i.e., those crash victims estimated to have incurred economic losses exceeding \$25,000. This small group represents only 8.8% of the real-life sample of 1,376 crash victims, and fewer than 1% of all auto crash victims.

This means the other 91.2% of the seriously injured group were compensated for all but 6% of their economic losses, as a group.

## 3. Information Omitted

The disproportionately high losses sustained by the "catastrophic few," who account for 94% of the total uncompensated loss, raise questions about the omission of relevant information on the circumstances of these catastrophic situations. It is impossible to get answers from these published volumes as to why these individuals were not reimbursed.

There is no explanation in the report as to why this vital information was withheld, while other less useful information is reported in great detail. For example, why was it decided to withhold information on the number of seriously injured persons who did not recover from auto insurance because they were injured in single-vehicle crashes,

or were at fault, or had neglected to purchase auto medical payments and collision insurance? How many had neglected to purchase health insurance, life insurance or other available forms of protection? Obviously, these factors have a direct bearing on the reimbursement received by this highly selected group of crash victims.

Finally, it would appear that all of the shortcomings attributed to the recovery systems for auto accident victims apply with equal or even greater force to the recovery systems available to persons injured or killed in other ways. In fact, this study indicates that auto accident victims are better protected already than most other categories of injured persons.

Proposed improvements in the present system, such as those outlined in the Guaranteed Protection Plan of the American Mutual Insurance Alliance, would further improve the protection available to auto crash victims.

## Exhibit 5

<b>TOTAL LOSSES AND EXPENSES</b> 107.46	<b>ADMINISTRATIVE EXPENSES AND TAXES</b> 24.84	<b>ADJUSTMENT EXPENSES INCURRED</b> 14.16	<b>LOSSES INCURRED</b> 68.46	<b>LOSSES PLUS ADJUSTMENT EXPENSES</b> 76.64	<b>AUTOMOBILE BODILY INJURY LIABILITY</b>
<b>TOTAL LOSSES AND EXPENSES</b> 111.82	<b>ADMINISTRATIVE EXPENSES AND TAXES</b> 25.34	<b>ADJUSTMENT EXPENSES INCURRED</b> 11.72	<b>LOSSES INCURRED</b> 74.82	<b>LOSSES PLUS ADJUSTMENT EXPENSES</b> 86.54	<b>AUTOMOBILE PROPERTY DAMAGE LIABILITY</b>
<b>TOTAL LOSSES AND EXPENSES</b> 107.12	<b>ADMINISTRATIVE EXPENSES AND TAXES</b> 25.12	<b>ADJUSTMENT EXPENSES INCURRED</b> 9.42	<b>LOSSES INCURRED</b> 72.62	<b>LOSSES PLUS ADJUSTMENT EXPENSES</b> 82.04	<b>AUTOMOBILE COLLISION</b>
<b>TOTAL LOSSES AND EXPENSES</b> 104.12	<b>ADMINISTRATIVE EXPENSES AND TAXES</b> 26.42	<b>ADJUSTMENT EXPENSES INCURRED</b> 8.12	<b>LOSSES INCURRED</b> 69.64	<b>LOSSES PLUS ADJUSTMENT EXPENSES</b> 77.72	<b>AUTOMOBILE THEFT AND COMPLESSING</b>
<b>TOTAL LOSSES AND EXPENSES</b> 102.42	<b>ADMINISTRATIVE EXPENSES AND TAXES</b> 34.52	<b>ADJUSTMENT EXPENSES INCURRED</b> 6.12	<b>LOSSES INCURRED</b> 60.22	<b>LOSSES PLUS ADJUSTMENT EXPENSES</b> 67.92	<b>HOMEOWNERS MULTIPLE PERIL</b>
<b>TOTAL LOSSES AND EXPENSES</b> 99.02	<b>ADMINISTRATIVE EXPENSES AND TAXES</b> 18.82	<b>ADJUSTMENT EXPENSES INCURRED</b> 8.22	<b>LOSSES INCURRED</b> 62.02	<b>LOSSES PLUS ADJUSTMENT EXPENSES</b> 70.22	<b>WORKMEN'S COMPENSATION</b>
<b>TOTAL LOSSES AND EXPENSES</b> 101.72	<b>ADMINISTRATIVE EXPENSES AND TAXES</b> 15.24	<b>ADJUSTMENT EXPENSES INCURRED</b> 2.32	<b>LOSSES INCURRED</b> 84.22	<b>LOSSES PLUS ADJUSTMENT EXPENSES</b> 86.54	<b>GROUP ACCIDENT AND HEALTH</b>

Source: **Aggregates & Averages (Property-Liability) - 1970 Edition - Alfred M. Best Co.**  
Averages of stock and mutual companies for 1969.

From 1971 Ohio Insurance Facts, Ohio Insurance Institute

Senator HART. Now we will have the testimony reflecting the point of view of the Automotive Parts and Accessories Association, Inc., and I am glad that its president, Mr. Donald Schlenger, is here.

**STATEMENT OF DONALD S. SCHLENGER, PRESIDENT, AUTOMOTIVE PARTS AND ACCESSORIES ASSOCIATION, INC.**

Mr. SCHLENGER. Mr. Chairman, my name is Donald Schlenger. I am grateful for the opportunity and privilege of appearing before this committee today as spokesman for the segment of the automotive aftermarket industry served by the Automotive Parts and Accessories Association, Inc. I am the president of the association and am president of Roth-Schlenger, Inc., of Union, N.J., a regional chain of home and auto stores and leased departments in the East and Midwest.

The segment of the industry I refer to as being served by the association is primarily the retail segment or what is sometimes referred to as the volume segment of the automotive aftermarket. Essentially, we provide automotive merchandise and services directly to the motoring public through retail stores, typified prominently by the Sears and Western Auto Stores across the country. There are well over 50,000 establishments of this type, and the companies that own them are, in part, members of our association. The size of these establishments vary considerably to be sure, but they are for millions of motorists, the principal source of automotive merchandise, service, and information.

We are not affiliated with car dealers, service stations, or garages that also sell at retail. Uniquely, to my knowledge, we are the only association in this field that includes in its membership not only the outlets that typify the market it serves, but also includes, with full equity, the manufacturer who sells directly to the retailer and the wholesalers that supply the market's smaller outlets. We also have, as full memers, many independent sales agents—and other service companies such as publishers, ad agencies, consultants—that are significantly involved in this particular segment of the market.

So, you see, we are a very broad-based, multirepresentational group of automotive aftermarket businessmen. This structure, I might add, lends our association a growth and influence potential to be reckoned with in all automotive quarters.

We are Washington, D.C. based, and we have expert staff and counsel here that make our membership among the best informed national voluntary membership bodies in this field—which brings me to the subject at hand with what I hope is a clear picture, in the committee's view, of the specific interest our association has in this legislation.

We will limit our comments to title V, entitled Diagnostic Inspections, Registrations and Titling Standards, wherein it states in section 501(a) (1) :

The standard shall require inspection of a motor vehicle whenever the title to the motor vehicle is transferred for purposes other than resale, and whenever the motor vehicles, automotive repair parts or accessories: Provided, subsystem, or functional nonoperational part, as defined by the Secretary, is damaged.

I believe that since the condition of a vehicle is a significant contributory factor in many accidents, it seems to me that a first and foremost legislative obligation to improve the national vehicular

safety picture would be to write, as you gentlemen have, a law requiring inspections that is absolutely binding on anyone that sells a car to a user, whether that car be a new one or a used one. Certainly, after a car has been in an accident, it should be inspected before it is allowed back on the road.

Hand in hand our concern for safety on the highways is our ever-increasing concern for the pollution of our environment. As cars become older, parts require replacement, repair, tuning, and continual preventive maintenance. Our experience has shown that as a vehicle increases in age its chances of becoming a contributor to pollution also increases if not properly maintained. An improperly functioning carburetor, distributor, spark plugs, leaky valves, faulty piston rings, all contribute to air pollution. Any one of these defects will increase the level of emission significantly. The public must be informed that it is necessary to maintain surveillance over his vehicle so that it may be detected before it becomes a polluter.

The further additions to highway safety program standard No. 1 have evoked our interest and lengthiest comment. You will probably find when all of the rhetoric and special pleading has been analyzed that the question of diagnostic centers, inspection stations, inspectors, however the individual or facility that evaluates a vehicle's condition is referred to, elicits the greatest controversy, especially since this bill would replace inspectors in certain States that now license them to be inspectors and the bill disallows the sale of parts and services on the same premises where the inspection or diagnosis is performed.

Presumably, there is, in the judgment of the authors of this bill, a danger of a conflict of interest where law enforcement and commerce share the same premises. This premise is essentially why we asked to appear here today. It seems to us that a great deal of criticism directed against repair work relates to work not being needed and selfishly recommended. Also many inspections are faced with this failure because of the promotion and sale of unneeded parts. On top of that, there will always be apprehension about the quality of inspections or diagnoses rendered not by impartial parties with a singular interest in inspecting for or diagnosing a car's faults, but by dually motivated businessmen. Any system that effectively creates a tempting climate, such as the present system does, has rather obvious pitfalls. Bear in mind that we do not intend these comments as a cynical appraisal of all inspectors. We mean only to suggest that under the present system the prevailing margin for private advantage at public expense is unacceptable for a national safety program.

Although many firms in the segment of the industry represented by our association presently perform inspections and also sell repairs and parts, we do not hesitate to recommend that all such businesses divest themselves of one or the other. If, however, a facility is equipped to inspect and diagnose thoroughly and rapidly, we would be perfectly willing, in most instances, to go on record in defense of the quality with which these services are performed as well as the impartiality maintained as respects where motorists get repairs and parts. Yet, we do not hesitate to recommend that all such facilities divest themselves from the repairing or parts-selling business. Or, if a facility is equipped to inspect or diagnose thoroughly and rapidly, we would recommend that it be allowed to charge realistically for its

function and expect, if that is the case, supplemental funds from the State that would assure reasonable charges and reasonable profits to compensate for the prohibition of selling parts and services.

We are extremely confident that the motorist will select wisely from among available service and parts outlets away from inspection stations or diagnostic centers. We will always be in the parts supply and repair automotive aftermarket industry and we fail to see any economic damage to our industry by allowing the public to choose its merchants rather than allowing merchants to capture the public.

We agree with Senator Hart when you envision an enormous cost savings to consumers upon passage of this bill. You are right when you say a nationwide system of diagnostic inspection systems may well prove to be the greatest money and frustration saver in the bill and that the diagnostic centers also would be used by the States for periodic inspections required under their laws. We have maintained all along that periodic inspections are the only practical means to assure that the vehicles on the road are, in themselves, safe for operation. We have also maintained that Federal standards for vehicles in use would validate public confidence in inspections by letting the public know what the inspection yardstick was, and by letting the public retain its option to get its cars in safe condition at competitive prices, or by doing his own repair work if he is qualified to do so.

Diagnostic techniques to analyze vehicles are increasing in popularity. They should be encouraged in such a way that all devices, techniques, and systems developed may be compatible with vehicles now on the road or developed in the future. We see the day when motor vehicles will have built-in diagnostic features which will allow for hookup to external diagnostic equipment. Such equipment should be so designed with uniform diagnostic principles and with a similar circuitry so that the independent inspector at a diagnostic station can test vehicles. Specific circuitry in a car with unique plugs should be discouraged, for this would reduce the freedom of choice of the consumer. He should have the right to competitive repairs of his car, if necessary, and should not have to go back to the original dealer to have his car tested and repaired. Therefore, we strongly urge the development of uniform diagnostic concepts to analyze and inspect motor vehicles.

In conclusion, we agree with the author that the consumers do want dependable automobiles—autos that are safe and economical to operate—and that do not pollute the air or the ground. We therefore strongly support the conception that diagnostic inspection centers as an independent entity, either operated by individuals or State government, in all instances these facilities will only offer diagnoses and inspection. They will not offer parts for sale or repair services. We further recommend that regular, mandatory vehicle inspection be embodied in this bill with uniformity of standards established by the Federal Government.

Thank you.

Senator HART. I am sorry, I was catching up with you and then you introduced a sentence just at the end which is not in the text. Would you reread that?

Mr. SCHLENGER. We further recommend that regular, mandatory vehicle inspections be embodied in this bill with uniformity of standards established by the Federal Government.

Senator HART. Thanks very much.

First of all, I welcome the support that you voice for features of the bill before us; and you, without putting dollar signs in here, say that inspections such as are required in the bill would be a benefit both from a safety standpoint and as an economic benefit.

Of course, I have been saying the same thing, but can you help me get more specific? If you can't maybe when you get back you will have an opportunity to provide it for the record. How close can you come to saying how much it would cost a vehicle owner to obtain the kind of inspection visualized here and how reliable—I suppose that would have to be in percentage—is the feedback, the verdict you get when you go through such an inspection?

Mr. SCHLENGER. I frankly feel that it could be kept at an approximately \$5 figure for a good safety inspection. As to the quality of the work, this is strictly depending on the—

Senator HART. I don't mean whatever quality of repairs which might be made, but the reliability of what you get for the \$5 judgment?

Mr. SCHLENGER. The quality of the inspection?

Senator HART. Yes.

Mr. SCHLENGER. You would have to have qualified inspectors that pass certain standards. This would be strictly up to the controls put into effect. It would vary as to how well it is supervised on controls. For example, in the State of New Jersey right now, our inspection there which is on a yearly basis is really one of the better ones in the country. I think it does a fairly good job.

Senator HART. I think it was today—although I could be wrong on that—that I noticed an analysis of some inspections that are being done in California which underscore the direct benefit to highway safety that can be obtained from inspections. The impression I have is that it is a study—I don't know whether the study investigated accidents that had accrued. Does this ring a bell with you? Have you seen it?

Mr. SCHLENGER. I think it was in the document of the gentleman who was on before me, in his presentation. I think it was in there. I think something like 29 percent was the figure I saw in there.

Senator HART. Let's assume it is 29 percent. That does give real meat to the argument that there is a very significant safety factor quite aside from the economic benefit of diagnostic inspection. I think you didn't say anything about the section of one of our bills that requires standards to be set for reparability and fragility and specifically the one known as the bumper standard.

Do you have any comment on that one?

Mr. SCHLENGER. I would be speaking on an individual basis because that would not be falling into our scope.

As an individual, I feel that this would be a great boon to the American motorist, I really do. Today you will see especially in the metropolitan areas we sell all accessories, but today one of the big items that we are selling is these large bumper guards. People are now putting them on because of the enormous cost on a minor front-end accident. I think it is excellent, though.

Senator HART. Mr. Schlenger, you are correct. The study that I was not able to lay a hand on was a California study and it was in-

cluded in the materials given us by Mr. Maisonnier. It was a study that was made by the California highway patrol, comparing more than 400 fatal single traffic accidents for mechanical failure. You are right, 29 percent of the examples examined had one or more mechanicals; more than 6 percent had a mechanical defect which caused the accident. This could produce an enormous chunk of fatal accidents.

Mr. Sutcliffe.

Mr. SUTCLIFFE. I find it very difficult to formulate questions on a statement that is very much in support of the particular legislation. Perhaps this is a weakness in my own ability to critically analyze.

One question does occur to me. You ask that in this legislation we mandate periodic motor vehicle inspections. Under the Highway Safety Act of 1966 there was a requirement that the Secretary of Transportation require the States to periodically once a year inspect motor vehicles. That standard has been in effect and to date it has not been complied with in many jurisdictions. The legislation even provided for a penalty against the contributions to the States to the highway trust fund. But that particular penalty has not been assessed so as to encourage the States to undertake periodic motor vehicle inspections. And if it were, many State officials have stated they would not undertake periodic motor vehicle inspections because the costs for them to undertake such a program would exceed the penalty that was set.

Are we talking about two different animals when we talk about the kind of periodic motor vehicle inspection that takes place in some States and diagnostic, dynamic testing that we envision utilizing in S. 976?

Mr. SCHLENGER. Well, as far as the periodic—I am talking about your yearly inspection, this is one animal. It is two separate things we are talking about. As far as I am concerned, they would both be performed by the same physical facility.

Mr. SUTCLIFFE. And that would be probably a little different facility than many of us have seen?

Mr. SCHLENGER. Right, that's correct. You would have two different entities. One would be the periodic safety test which would be performed by the same agent, and the other one would be the diagnostic which would be in the same facility. It would be two different and drastically different costs as far as my appraisal.

Mr. SUTCLIFFE. So your \$5 figure would be your required safety inspection required in S. 976 not only annually but after a crash or when title is transferred?

Mr. SCHLENGER. Right.

Mr. SUTCLIFFE. Your other inspection would be those inspections to determine how to maintain a vehicle in mechanical order so that its performance outside the safety area is optimum.

Mr. SCHLENGER. I have here both of these. I have one which would be your simple safety inspection, which would be what would happen——

Mr. SUTCLIFFE. What are those cards, what a person would receive from inspection?

Mr. SCHLENGER. This would be an idea of a card whereby on one side would be the identification of the vehicle and the safety items to be inspected, and it would show what was needed to bring the car into

a completely safe condition. The other side would have to be filled out by the repair facility, and it would indicate what the costs would be and then at the bottom of it—this is an idea that has been submitted—would be a certificate that this work was performed by the repair facility which would have to have an authorized individual signing it.

This would bring about the issuance of the permanent inspection sticker. In other words, when the car moved through inspection initially, the sticker is taken out. If the car goes through, if it is all right, a new sticker is put on. If it is not all right, a temporary sticker is put on. The faults are entered, and then the individual has it fixed at a repair facility. After it is fixed, it is certified that it is taken care of by a certified inspector at the repair facility. Then he in turn will send this back, either by mail and get a sticker, or if necessary he would have to bring the car back into the inspection station. This is one thought of how this system would work.

Now, on the other hand, I also have here what would be considered a diagnostic form. This has 150 different check points. This is a complete diagnostic system.

Mr. SUTCLIFFE. This would be an optional fallout advantage for the diagnostic center established by the Government for safety purposes?

Mr. SCHLENGER. That's right. This would be the kind of thing you would run your car through, find out what was wrong, take it to a mechanic, have a mechanic know what was wrong with the car, fix those things, and you could then, if you wanted to, run it back through the diagnostic center to make sure the car had been properly repaired.

Mr. SUTCLIFFE. May we have, for the record, those documents? Do you have copies?

Mr. SCHLENGER. Surely, both of them, yes.

Senator HART. Thank you. They will be made a part of the record.

(The material follows:)

## REPAIR FACILITY

Vehicle Owner		Name		Address		License Number	
Address		Date		Mechanic Certification Number			
Vehicle Identification Number				OPERATIONS			
Inspection Station Number		Address					
Inspector and License Number							
Brakes		Steering		Exhaust			
Occupant Protection		Anti-lock					
Lights		Suspension		Engine & Fuel			
Horn		Control & Instruments		Drive Train			
Tires		Glass		Emission Control			
Wheels		Wipers, Defrost					
		Mirrors					
		Reflectors					
		Signature of Inspector					
		Name				License Number	

CERTIFICATION OF INSPECTION

a completely safe condition. The other side would have to be filled out by the repair facility, and it would indicate what the costs would be and then at the bottom of it—this is an idea that has been submitted—would be a certificate that this work was performed by the repair facility which would have to have an authorized individual signing it.

This would bring about the issuance of the permanent inspection sticker. In other words, when the car moved through inspection initially, the sticker is taken out. If the car goes through, if it is all right, a new sticker is put on. If it is not all right, a temporary sticker is put on. The faults are entered, and then the individual has it fixed at a repair facility. After it is fixed, it is certified that it is taken care of by a certified inspector at the repair facility. Then he in turn will send this back, either by mail and get a sticker, or if necessary he would have to bring the car back into the inspection station. This is one thought of how this system would work.

Now, on the other hand, I also have here what would be considered a diagnostic form. This has 150 different check points. This is a complete diagnostic system.

Mr. SUTCLIFFE. This would be an optional fallout advantage for the diagnostic center established by the Government for safety purposes?

Mr. SCHLENGER. That's right. This would be the kind of thing you would run your car through, find out what was wrong, take it to a mechanic, have a mechanic know what was wrong with the car, fix those things, and you could then, if you wanted to, run it back through the diagnostic center to make sure the car had been properly repaired.

Mr. SUTCLIFFE. May we have, for the record, those documents? Do you have copies?

Mr. SCHLENGER. Surely, both of them, yes.

Senator HART. Thank you. They will be made a part of the record.

(The material follows:)

Vehicle Owner \_\_\_\_\_ Name \_\_\_\_\_ Address \_\_\_\_\_ License Number \_\_\_\_\_

Address \_\_\_\_\_ Date \_\_\_\_\_ Mechanic Certification Number \_\_\_\_\_ OPERATIONS \_\_\_\_\_

Vehicle Identification Number \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

Inspection Station Number \_\_\_\_\_ Address \_\_\_\_\_

Inspector and License Number \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

Brakes \_\_\_\_\_ Steering \_\_\_\_\_ Exhaust \_\_\_\_\_

Occupant Protection \_\_\_\_\_ Antilock \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

Lights \_\_\_\_\_ Suspension \_\_\_\_\_ Engine & Fuel \_\_\_\_\_

Hornes \_\_\_\_\_ Control & Instruments \_\_\_\_\_ Drive Train \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

Tires \_\_\_\_\_ Glass \_\_\_\_\_ Emission Control \_\_\_\_\_

Wipers, Defrost \_\_\_\_\_ Mirrors \_\_\_\_\_

Reflectors \_\_\_\_\_

Signature of Inspector \_\_\_\_\_

Name \_\_\_\_\_ License Number \_\_\_\_\_

CERTIFICATION OF INSPECTION

Auto Trouble  
**CARL**  
INCORPORATED

30 L STREET, SOUTH-EAST  
WASHINGTON, D. C. 20024  
554-3400

NAME \_\_\_\_\_ MAKE \_\_\_\_\_

ADDRESS \_\_\_\_\_ YEAR \_\_\_\_\_

CITY \_\_\_\_\_ MILEAGE \_\_\_\_\_

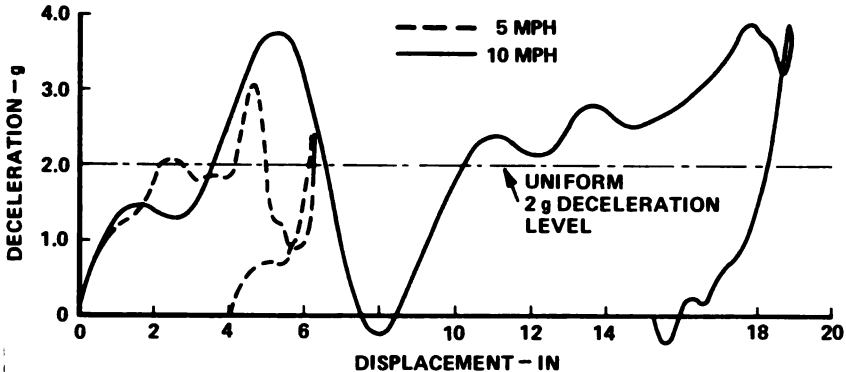
DATE OF TEST \_\_\_\_\_ No. 2151

	GOOD	MARG	FAIL
150. GENERAL APPEARANCE			
149. RETRACTABLE HEADLIGHT OPERATION			
148. HEADLIGHT ALIGNMENT RIGHT LOW BEAM			
147. HEADLIGHT ALIGNMENT LEFT LOW BEAM			
146. HEADLIGHT ALIGNMENT LEFT HIGH BEAM			
145. HEADLIGHT ALIGNMENT RIGHT HIGH BEAM			
144. LOWER BALL JOINTS			
143. UPPER BALL JOINTS			
142. BRAKE DRUM			
141. OILSEAL			
140. WHEEL BEARING LUBRICATION			
139. WHEEL CYLINDER LEAKAGE			
138. BRAKE SPRING CONDITION			
137. BRAKE LINING CONDITION			
136. TIRE CONDITION			
135. FUEL TANK & LINE			
134. REAR SPRINGS			
133. REAR SHOCK ABSORBERS			
132. LEFT REAR BRAKE LINE & HOSE			
131. RIGHT REAR BRAKE LINE & HOSE			
130. DIFFERENTIAL LEAKAGE			
129. UNIVERSAL JOINTS			
128. TAILPIPE & BRACKET CONDITION			
127. RESONATOR CONDITION			
126. PARKING BRAKE CABLE			
125. HEAT RISER VALVE			
124. EXHAUST PIPE & MUFFLER			
123. FUELZE PLUG CONDITION			
122. STEERING BOX CONDITION			
121. UPPER & LOWER CONTROL ARMS			
120. STEERING LINKAGE CONNECTIONS			
119. STEERING DRAG LINK			
118. STEERING IDLER ARM			
117. TRANSMISSION OIL LEAKS			
116. ENGINE OIL LEAKS			
115. FRONT SHOCK ABSORBERS			
114. FRONT SPRINGS			
113. LEFT FRONT BRAKE LINE & HOSE			
112. RIGHT FRONT BRAKE LINE & HOSE			
111. FRONT WHEEL BALANCE			
110. WHEEL ALIGNMENT — CAMBER L. R.			
109. WHEEL ALIGNMENT — CAMBER — R. R.			
108. WHEEL ALIGNMENT — TOE IN REAR			
107. STEERING WHEEL SPOKE POSITIONING			
106. WHEEL ALIGNMENT — L. CASTER			
105. WHEEL ALIGNMENT — R. CASTER			
104. WHEEL ALIGNMENT — L. CAMBER			
103. WHEEL ALIGNMENT — R. CAMBER			
102. WHEEL ALIGNMENT — TOE IN			
101. MAXIMUM ROAD NOISE POWER			
100. Automatic Trans. Shift Pattern & Operation			
99. CLUTCH PEDAL FREEL TRAVEL & OPERATION			
98. DRIVE LINE BALANCE			
97. Rear Wheel Speedometer Test at 60 MPH			
96. Rear Wheel Speedometer Test at 30 MPH			
95. CARBURETOR POWER VALVE OPERATION			
94. INTAKE MANIFOLD VACUUM — LOAD			
93. INTAKE MANIFOLD VACUUM — IDLE			
92. ACCELERATION PUMP OPERATION			
91. FUEL CONSUMPTION			
90. FUEL FLOW			
89. FUEL PUMP PRESSURE			
88. A/F FUEL RATIO			
87. REGULATED CHARGE VOLTAGE			
86. IDLE RPM			
85. FAST IDLE CARBURETOR SETTING			
84. CYLINDER BALANCE			
83. FOULED UP SHORTED PLUGS			
82. PLUG WIRE CONDITION			

81. SECONDARY VOLTAGE REQUIREMENT	
80. DISTRIBUTOR ROTOR AIR GAP	
79. DISTRIBUTOR CAP & ROTOR LEAKAGE	
78. DISTRIBUTOR ADVANCE — CRANKSHAFT DEGREE	
77. INITIAL TIMING	
76. FUEL VARIATION	
75. FUEL ANGLE	
74. ARcing POINTS	
73. MECH. ACTION POINTS	
72. REGULATOR CUT-OUT RELAY	
71. CHARGE CURRENT OUTPUT	
70. STARTING CURRENT DRAW	
69. SOLENOID CABLE & CONTACT DROP	
68. SOLENOID CURRENT DRAW	
67. PRIMARY RESISTANCE BYPASS	
66. AVAILABLE SECONDARY VOLTAGE	
65. CONDENSER LEAKAGE	
64. CONDENSER CAPACITY	
63. CONDENSER SERIES RESISTANCE	
62. COIL POLARITY	
61. COIL SECONDARY RESISTANCE	
60. BATTERY TO COIL RESISTANCE	
59. COIL PRIMARY RESISTANCE	
58. POINT RESISTANCE	
57. BATTERY UNDER LOAD	
56. NO LOAD BATTERY VOLTAGE	
55. REAR BRAKE FADE	
54. REAR BRAKE UNBALANCE	
53. REAR BRAKE EFFORT AT 45 M.P.H.	
52. BRAKE PEDAL RESERVE	
51. BRAKE PEDAL FADE	
50. FRONT BRAKE FADE	
49. FRONT BRAKE UNBALANCE	
48. FRONT BRAKE EFFORT AT 45 M.P.H.	
47. FRONT WHEEL SPEEDOMETER CHECK	
46. TURN SIGNALS	
45. TAIL & TAG LIGHTS	
44. BACK UP LIGHTS	
43. BRAKE LIGHTS	
42. PARKING LIGHTS	
41. ELECTROLYTE LEVEL & SPECIFIC GRAVITY	
40. BATTERY CABLE CONDITION	
39. BATTERY VISUAL CONDITION	
38. CHARGE VALVE OPERATION	
37. AIR FILTER ELEMENT CONDITION	
36. PRESSURE CAP CONDITION	
35. COOLING SYSTEM PRESSURE TEST	
34. COOLANT LEAKS	
33. HEATER HOSES & CORE	
32. LOWER RADIATOR HOSE	
31. UPPER RADIATOR HOSE	
30. RADIATOR CONDITION	
29. ENGINE OIL LEVEL & CONDITION	
28. POWER STEERING FLUID LEVEL	
27. BRAKE FLUID LEVEL	
26. CARBURETOR & FUEL PUMP LEAKS	
25. BELT(S) CONDITION & TENSION	
24. POWER STEERING PUMP & HOSE CONDITION	
23. COOLANT TEMPERATURE PROTECTION	
22. WATER PUMP CONDITION	
21. COOLANT LEVEL & CONDITION	
20. EXHAUST SMOKE	
19. P. C. V. VALVE	
18. TRANSMISSION FLUID LEVEL & CONDITION	
17. HOOD AND LATCH OPERATION	
16. WIPER BLADE & ARM CONDITION	
15. MASTER CYLINDER LEAKAGE	
14. PARKING BRAKE OPERATION	
13. POWER WINDOW OPERATION	
12. AIR CONDITIONER OPERATION	
11. HEATER & DEFROSTER OPERATION	
10. HORN OPERATION	
9. SEAT BELT CONDITION	
8. INSIDE & OUTSIDE MIRROR	
7. WINDOW GLASS CONDITION	
6. WINDSHIELD CONDITION	
5. WIPER & WASHER OPERATION	
4. FRONT SEAT OPERATION	
3. INSTRUMENT LIGHTS & GAUGES	
2. INSIDE LIGHTS	
1. REAR TIRE CONDITION	

FILE COPY PAGE MARK TAB

## SLIDES TO BE PRESENTED

MEASURED DECELERATION-DISPLACEMENT DATA FOR  
FRONTAL TESTS WITH 1970 CHEVROLETS

Senator HART. It makes it a little more understandable to those who are not familiar with even a raw sort of outline procedure to understand how this could be translated into a manageable and understandable form from the consumers' point of view. You would know what you were shopping around for if you wanted to shop around.

Mr. SCHLENGER. With that form there, you could do maybe three different repair facilities and check their prices.

Mr. SUTCLIFFE. Senator, I have no further questions.

Senator HART. Mr. Schlenger, nor do I, but I thank you very much for the support you voice for certain of the legislation and giving us the last two documents that were just made a part of the record. Others on the committee will be interested in seeing them.

We adjourn to resume in this room at 10 a.m.

(Whereupon, at 5:40 p.m., the hearing was adjourned to reconvene at 10 a.m., May 7, 1971.)



# AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

FRIDAY, MAY 7, 1971

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met, pursuant to recess, at 10 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart, presiding.

Present: Senators Hart, Baker, and Cook.

Senator HARR. The committee will be in order.

As I probably indicated yesterday, the highlight in a personal sense for me in this hearing is the opportunity to welcome our next witness. Politicians particularly overdo the business of describing people in extremely favorable fashion to the point where it is discounted 99 percent. In this instance I could use many complimentary adjectives, but shall not, and simply say that I welcome the man who was elected secretary of state in Michigan. He is certainly one of our finest public officials and a very good and old friend of mine, Secretary of State Richard Austin.

## STATEMENT OF HON. RICHARD H. AUSTIN, MICHIGAN SECRETARY OF STATE

Mr. AUSTIN. Thank you, Senator Hart, not only for inviting me, but for that very kind introduction.

Senator HART. May I introduce the Michigan secretary of state, Mr. Austin, Senator Cook.

Senator COOK. How do you do, Mr. Austin.

Mr. AUSTIN. Mr. Chairman and members of the committee, I am honored to appear before this distinguished body to discuss some of the problems of motor vehicle accident compensation. I would like today to talk about the Michigan experience and current moves toward reform in this area.

In the past few weeks several important bills have been introduced in the Michigan Legislature which would establish no-fault auto insurance. As secretary of state I have watched these developments carefully and am studying the individual proposals as they are developed. In Michigan the secretary of state, among other duties, administers the State's motor vehicle and driver licensing programs. We have on file some 5,900,000 driver records and approximately 6 million motor vehicle records in our files.

As a basic set of guidelines for the appraisal of new legislation I have found most valuable the Department of Transportation automobile and compensation study materials.

Michigan differs from most States in its approach to the general subject of accident compensation. In 1966 our State established the motor vehicle accident claims fund (often referred to as the uninsured motorists fund or MVACF.)

I think I could characterize my testimony today as simply reporting from a State in which we believe we have a reasonably successful uninsured motorist program. But despite the fact we have what may be regarded as a reasonably successful uninsured motorist program, we feel that reform is necessary.

This fund in Michigan was designed to protect citizens from loss due to death, injury, or property damage in excess of \$200 resulting from accidents involving drivers who did not have insurance and who were found to be at fault, or unidentified drivers.

Michigan law requires every operator of a motor vehicle to have a minimum amount of property damage and public liability insurance. Those who do not present proof of this insurance must pay a \$35 fine or penalty to the State's MVACF. In addition, those who have the minimum insurance pay an annual fee of \$1 to the fund. I think it is important to report that actions of the current session of the legislature have increased the uninsured motorist fine to \$45, it was increased \$10, and at the same time the legislature eliminated the fee of \$1 on the insured motorist. We have been analyzing the financial condition of our fund and some of us felt perhaps we could eliminate the \$1 charge on the insured motorist and still maintain the fund solvent.

The legislature, however, felt that just to play it safe they would increase the penalty on the uninsured motorist \$10. If you are interested in how much money is involved, we are collecting approximately \$4 million from insured motorists at \$1 a piece, and we have been collecting approximately \$2.5 million, I believe it is \$2.5 million, from the uninsured motorists. We are going to lose some of our revenue in this process, but by increasing the uninsured motorists \$10 we will make up part of the loss. I am informed that the actual amount we collect from the uninsured motorists is about \$8 million.

Since its inception in 1966 the fund has succeeded in satisfying certain claims and providing some of the protection it was designed to achieve. I do not, however, regard this as the best solution available in the light of other current alternatives.

In its first 5 years of operation the Michigan fund has collected a total of nearly \$68 million. Nearly \$11 million has been paid in claims. However, a little more than \$11 million has been expended for legal, administrative and other operating needs. Note this, please: of every average dollar paid by the fund 49½ cents went for claims while 50½ cents went for operating expenses. Moreover, as the fund matures and claims accumulate, legal costs are skyrocketing proportionately from \$380,000 2 years ago to \$500,000 last year to an estimated \$775,000 this year.

We had a unique problem with the fund this year. No sooner was I elected to my present office than the Governor, hard pressed by serious fiscal problems, proposed that the State borrow a considerable part of the MVACF to be used by other State departments. A loan of \$45 million has just been negotiated for this purpose by the legislature.

A danger heretofore underestimated is that sometime in the future lurks the possibility that money assigned to the specific purposes of

accident compensation may not be available for the job intended. I devoutly hope and trust this will not occur, but you gentlemen are well aware of the alluring temptations posed by a voluptuous surplus or contingency fund anywhere during a time of fiscal crisis.

Senator Cook. Mr. Austin, before you go on, may I ask what kind of loan it is? I mean what type of payback provisions does it have?

Mr. AUSTIN. It is to be paid back at the rate of \$9 million a year over a 5-year period, plus interest. We had quite a controversy over the interest question.

Senator Cook. Does it have a provision requiring that at no time will the State, in regard to that note, allow the fund to become insolvent?

Mr. AUSTIN. Exactly. The legislature in the bill which authorized the transfer provided for meeting any claims that might arise in the fund that we are unable to meet as a result of this money being borrowed from it.

Senator Cook. So it is conceivable that the state, out of necessity and by legislative action, would have to accelerate its payment so your fund would not become insolvent?

Mr. AUSTIN. Right.

Senator Cook. Thank you.

Mr. AUSTIN. You are quite welcome.

I would like to explain my other reservations about the motor vehicle accident claims fund as it operates in Michigan.

First, insurance companies are now able to refuse coverage to drivers they consider bad risks (for whatever reason) and thereby force them to do one of two things. They may either make application to the so-called assigned risk pool operated by the insurance companies and be assigned to an insurance company which must write them a policy, although the rates are quite high; or they must pay the \$35 fee, now \$45, to the fund if they want to drive legally. Last year 83,000 motorists applied to the assigned risk pool for coverage while some 260,000 motorists elected to pay the fund. Incidentally, we are not prepared to tell you whether the 260,000 represents all of the uninsured motorists, because many drivers who buy insurance very often drop their insurance after they get their license. And I should also make clear that the fund is not insurance.

Too often the decisions by insurance companies not to insure motorists are based not on true risk or on driver ability but on place of residence, age, or other discriminatory rulings which are not applied equally to all drivers but act particularly against black people and poor people.

Second, if an uninsured motorist is involved in, but not responsible for, an accident, he is often forced to agree to pay at least a portion of the damages in order to retain his license and avoid having to buy expensive financial responsibility insurance. And I will say more about this financial responsibility insurance.

In Michigan an uninsured motorist involved in, but not necessarily responsible for, an accident resulting in death, injury, or property damage in excess of \$200 has 60 days to either: (1) Submit an affidavit attesting that all claims arising from the accident have been paid, or (2) deposit an amount with the State equivalent to the estimated dam-

ages which will be held for at least 1 year. If neither of these steps is taken, his license will be suspended.

To regain his license he must comply with one of the two previously mentioned requirements, and in addition must purchase what is called financial responsibility insurance, and maintain this coverage for 3 years.

The cost of the financial responsibility insurance is not based on the same rate structure that governs regular insurance policies. It is not unusual to find such policies costing up to \$1,500 per year or more. The only other option open to an individual who must prove financial responsibility to drive legally again is to deposit \$25,000 cash or an equivalent bond with the State for 3 years. And no one remembers that ever happening.

Keep in mind that this is what can happen to an uninsured motorist if he is involved in one of these accidents even though he is not responsible for the accident.

The shortcomings of our MVACF can be overcome, in my opinion, with a complete compulsory and effective no-fault auto insurance plan.

This no-fault legislation should, in my opinion, cover both personal injury and property damage, although plans have been proposed that would make the property damage or collision optional. It should pay the entire loss suffered for injuries resulting from an auto accident, except for compensation occurring from other sources, such as sick pay or health insurance. I would hope that standard coverage would amount to at least \$1,000 per month for wage loss and at least \$1,000 for funeral expenses. The insurer would, of course, make available to the policyholders as options larger benefits as well as certain deductibles.

I do not favor no-fault legislation which offers less than a complete overhaul of our present system. A prescription for vitamin pills will not suffice where massive blood transfusions are required, and I think you will agree that that is what is required in this industry.

A proper, comprehensive, consumer-oriented no-fault law would not only contribute to solving today's crisis in auto insurance but would in Michigan also eliminate the need for our motor vehicle accident fund. If it does not eliminate the fund, it would at least reduce reliance on the fund. And I do not want it to be understood that my presence here today is to advocate abolishing this fund. What I am simply saying is that if we can get a comprehensive no-fault plan we may be able to eliminate the fund and have better coverage for everyone.

There would be other advantages to a good no-fault program. You are familiar with most of them, so I will not be repetitious. Let me, however, mention one or two of the advantages that I regard as vital.

Insurance companies under no-fault as I understand it would no longer be able to refuse coverage, but instead would establish a rate structure based upon driving performance. This would have the added strong incentive for each motorist to improve his driving record to obtain a better rate.

The tragic continuance and increase of fatalities and injuries on our streets and highways requires strong governmental responses.

Incidentally, on Easter Sunday in the city of Detroit we had a single accident in which seven people were killed, including the driver.

We must judge every new program first by what it will do to reduce

the horrible carnage resulting from auto accidents. That is why I prefer an insurance program which recognizes and rewards good driving performance.

Another principal advantage of no-fault would be the elimination of the need for financial responsibility insurance. If all drivers are required to have some form of low cost minimum coverage, this extra insurance should be unnecessary.

The legislation which I favor has been recently introduced by State Senator Coleman A. Young and is now before the Michigan Senate. I think I should make clear that Senator Young's bills have just been introduced; they have not yet been subjected to the close scrutiny that bills are normally given in our legislature; there have been no public hearings and the bills do not mesh together perfectly, but they do embrace the general concept that I favor. And I feel that the legislature will, before it has completed its deliberations, perfect these bills.

Let me add, however, that I would strongly urge this committee to recommend a national no-fault program rather than allow 50 varied and unsynchronized plans to be developed unevenly, unrhythmically and possibly dischordantly. This insurance symphony should play one set of music requiring all members of the orchestra to play under one director.

We in Michigan have no alternative at the present moment but to proceed with our own State plan. I would prefer, however, to see a national no-fault bill along the lines of the one proposed by our own senior Senator, Philip Hart. This bill in my opinion should be strengthened by including coverage for property damage—I feel very strongly about property damage—to fulfill all of the "Recommendations for Change" as advanced by Secretary of Transportation John A. Volpe.

If Senator Hart's bill is adopted we in Michigan would be able to assure our motorists the same protection wherever they go, in whatever State they visit and at a time of personal crisis when this assurance would be of special comfort. I would like to be able to tell Michigan residents they will have the same protection in any State they visit.

We in Michigan have good insurance laws, fair programs, a reasonably effective anticancellation act, group auto insurance plans and an uninsured motorists fund which, despite its shortcomings, provides needed protection. We are also taking important steps to work toward enactment of the most complete consumes no-fault auto insurance program in the country.

The Department of Transportation and this committee have provided us with valuable assistance. On behalf of our State, I want to thank you for this help and I want to express my deep appreciation for allowing me this appearance today.

Thank you.

Senator HART. Mr. Austin, thank you. I should indicate that as you were testifying we were joined by the able Senator from Tennessee, Mr. Baker.

Mr. Austin, as a citizen of Michigan, I would make this one comment. I think we can describe Michigan as a good State as far as uninsured motorists, and yet having said it that way, we realize how unsatisfactory the average is. In Michigan, as I gather from your testimony, the number of drivers operating without liability insurance runs

between 5 and 10 percent. Nationally the average is about 15 to 20 percent.

I am struck by one point you make here and——

Mr. AUSTIN. May I interrupt?

Senator HART. Yes.

Mr. AUSTIN. It is quite possible the number of uninsured motorists could be higher in Michigan. We know how many are paying the penalty, but there are more, perhaps, who are not insured. They may be able to provide proof of insurance at the time they renew their license, but that insurance could lapse, and more of them may be driving without insurance. I wanted to make sure on that point.

Senator HART. Maybe that is why I threw in the 5 to 10 percent.

One point you make is that you want an insurance program which recognizes and rewards good driving performance. One of the criticisms against a no-fault system is that good, bad, and indifferent, there is no reward for disciplining yourself to be a safe driver. You don't have to worry about the cancellation or failure to recoup your losses because of your own negligence. Have you given thought to this aspect of the debate?

Mr. AUSTIN. Yes, Senator. In Michigan we are very fortunate in having a very sophisticated computer system and a point system for rating drivers. We have approximately 5,900,000 driver records on line on our computer for immediate access.

Senator HART. Does that mean we have listed 5,900,000 people?

Mr. AUSTIN. That is correct.

Senator HART. As drivers?

Mr. AUSTIN. As drivers.

It is possible from a terminal anywhere in the State to communicate directly with our computer and within 30 seconds to a minute get a copy of any driver record, any one of those 5,900,000 records.

I want to qualify this: Sometimes it takes 2 or 3 minutes to print out one of those records, but the record can be searched out in about 30 seconds to a minute.

We have a point system which requires us to review a driver's record when he accumulates 12 points, and at that point we can suspend his license, or we can put him into some type of driver improvement program. If he responds, his license may not be suspended.

Well, with the facility that we have available, it would not be difficult to provide insurance companies with some accurate information that could be used for setting rates, variable rates, depending on the driver's performance. So even under a no-fault program, it would be possible for the insurance companies to vary the rates depending on a person's driving skill and ability and performance.

I feel that even under a no-fault plan there would be an incentive to drive carefully, avoid accidents, in order to keep the premium low.

Senator HART. Thank you.

There is one second criticism that you might have some reaction to. There is developing—I think I state this fairly—there is developing an agreement that we should go to a no-fault system in this country. But the suggestion is made that we experiment at the State level. If, in the next few years, there is a no-fault system as a result of the action of the 50 State legislatures, then we will have moved to national no-

fault. And if there is not, and the Federal Government decides to apply no-fault through Federal legislation, we will have had the benefit of a series of experiments at the State level.

That assumes that half a dozen or more States will adopt a form of no-fault insurance. You have reminded me that State Senator Coleman Young has introduced legislation in Michigan. This is true elsewhere. How does that argument strike you, that we ought to wait and see what the States do and what we learn from what they have done?

Mr. AUSTIN. I don't believe we should wait for national guidelines, if I can use that expression, national direction. I am personally afraid to have 50 States experimenting. We have no choice if the Federal Government does not move, if Congress does not move. Because we have got to reform our insurance programs.

But it would seem to me that it would be much better if we could have a synchronized program in effect throughout the Nation, as many drivers cross State lines, and I have a feeling that unless the laws are uniform in the States, at least in some very basic respects, drivers will not know exactly what their responsibilities are in the States in which they are driving, except the State of their residence.

I feel also that some of the States may fall into some practices that will be hard to correct, once the Federal Government acts and decides on guidelines for all of the States to observe. Since we are plowing fertile ground, it just seems to me it would be so much better if we could get the resources focused on this problem, to come up with a solution that is best for all of the people of the country and then all of us can proceed harmoniously to work within those guidelines.

So I do not favor waiting. I believe we ought to move immediately with Federal legislation.

Senator HART. Thank you very much.

Senator Cook?

Senator COOK. Mr. Austin, you reveal some very interesting statistics. I notice in one item later on you state that the fund is not insurance. Yet, your record of payouts per dollar paid in is about equal to the insurance companies.

You state that you have paid out 49½ cents for claims, and you have paid 50½ cents for operating expenses. What do you include in operating expenses? First of all, before we get to this, so I think we can both have some background, will you explain to me under what terms you make a claim with the fund, what the fund stands ready to pay in relation to the \$35 or the \$45 that is paid in? Could you give me an idea of some of the judgments that have been rendered against the fund, as to their size, and then let's talk about the expenses.

Mr. AUSTIN. First of all there are limits. It is the \$10,000 and \$20,000 limits.

Senator COOK. All right. That is your limit then.

Mr. AUSTIN. There is also a \$200 deductible, that is the minimum. That is for property damage. There is no minimum for personal injury, just for property damage.

Senator COOK. It is 10-20, and the ceiling.

Mr. AUSTIN. That is correct. The legislature, incidentally, this year has raised those limits to \$20,000 and \$40,000, but we have had no experience with 20 and 40. In fact, the Governor has not yet signed the bill.

Senator COOK. Can you give me an idea of some of the judgments on personal injuries that have been rendered against the fund?

Mr. AUSTIN. You mean aside from the maximum? We have had several maximums.

Senator COOK. I am talking about personal injuries. You said there was no ceiling on personal injuries.

Mr. AUSTIN. I am sorry. There is no deductible on personal injuries.

Senator COOK. I see. All right.

Mr. AUSTIN. The ceiling is 10 and 20.

Senator COOK. Now, did the fund pay out \$380,000 2 years ago and a half a million dollars last year to lawyers that defended the fund?

Mr. AUSTIN. Yes. This was paid to—we have a special arrangement with the Attorney General who appoints attorneys across the State to represent the fund in the various counties and communities. And these are the fees that we paid to our own counsel. It does not include fees paid by motorists who may have engaged counsel to collect money from the fund.

Senator COOK. What I am trying to suggest is that this really doesn't constitute an insured fund. If you feel it is the responsibility of the State to defend these claims, if you feel it is the responsibility of the State to try these claims, if you feel that it is the responsibility of the State to pay out of this a half million dollars a year for legal counsel to defend these claims, then it really does constitute a degree of insurability, does it not?

Mr. AUSTIN. I suppose you could construe it as a degree of insurability, except that every claim that is paid is collectible, or at least is presumed collectible. We have had very poor experience in making collections. Every claim that we pay must be repaid.

Senator COOK. I think it is very interesting in all of this that a fund to protect against the uninsured motorist on the State level, on the governmental level, has cost so much to administer as compared with what the insurance companies are paying out per premium dollar.

In other words, you are paying out 49½ cents and it is estimated that the insurance companies throughout the country are paying out somewhere around 50 cents out of every premium dollar.

Mr. AUSTIN. You understand that this is because fault must be determined, that is, the responsibility for the accident must be fixed and then the amount of the claim must be established.

Senator COOK. You treat it on a straight tort liability basis then?

Mr. AUSTIN. Exactly.

Senator HART. It is a small wonder there isn't any variation.

Senator COOK. I am not arguing the point.

Senator HART. No. I understand you are not arguing the point, Senator Cook.

Senator COOK. Apparently counsel has done a pretty good job for the fund, because it has paid out \$11 million and collected \$68 million.

Mr. AUSTIN. I think maybe I better do a little explaining here, too.

Senator COOK. All right.

Mr. AUSTIN. The cash that was in the fund was encumbered by claims that are in process of litigation.

Senator COOK. Then it is treated the same as insurance.

Mr. AUSTIN. We have approximately \$30 million of claims that are now in the process of litigation. Of course one of the big argu-

ments that I had when the State insisted upon borrowing \$45 million was that the money was encumbered. But it was borrowed anyhow because it was needed to mete out State responsibilities.

Senator COOK. You are also collecting approximately \$14 million, adding to it every year, and some of the \$30 million encumbrance is more than a year old, I assume; is it not?

Mr. AUSTIN. Exactly.

Senator COOK. In other words the encumbrance of your fund, and I direct this to both of you, the encumbrance of your fund is really in direct proportion to the ability to try?

Mr. AUSTIN. Exactly.

Senator COOK. In other words, if you have \$30 million encumbered, some of the claims may be as old as the fund itself if you haven't been able to get trial on a particular case. Would that be correct?

Mr. AUSTIN. Exactly. There are unpaid claims and there are also claims pending and the insurance commissioners, the actuaries who examine our funds, established the full liability at approximately \$30 million.

Senator COOK. What do you do when a claim is filed? Do you immediately assign that claim a value based on an investigation, and immediately encumber the fund to that extent?

Mr. AUSTIN. Exactly.

Senator COOK. And it constitutes an encumbrance?

Mr. AUSTIN. That's right.

Senator COOK. Now, as you foresee it in your own mind, in what you would like to have, with the elimination of State authorized programs, State authorized no-faults, give me your opinion of section 3(b) of S. 945. It reads as follows:

No State shall require the purchase or acquisition of insurance or any other security as a condition to the operation or use of any motor vehicle upon the public streets, roads, or highways of such State, other than the insurance required under section 5 of this act.

Do you believe that a Federal bill should provide or at least give the signal to the driving public that it need only carry whatever is authorized under a no-fault program and not attempt to secure other coverage?

Mr. AUSTIN. Oh, I would not in anyway suggest that a person should not be encouraged to get coverage additional to that which may be provided in the bill. As I understand it, your Senate bill does not provide for property damage. Am I correct?

Senator COOK. That is right.

Mr. AUSTIN. Obviously an individual should carry property damage insurance.

Senator COOK. Then you think that a State ought to have the authority legislatively to protect its own citizens over and above a Federal statute if it feels it is for the benefit and safety and protection of its citizens?

Mr. AUSTIN. Oh, I would agree. I would agree.

Senator COOK. Thank you, Mr. Chairman.

Senator HART. I take it that when you describe our fund as not insurance, you have in mind this distinction, that the State has to then go out and act against, attempt to recover or collect from the uninsured motorist—

Mr. AUSTIN. Let me express it another way, Senator, if I may. The \$35 that an individual pays is not an insurance premium. That is a penalty that he pays for not having insurance coverage at the time he applies for his automobile license. Other individuals who are insured are required or have been required up to this point to pay \$1 into the fund, and they may derive absolutely no benefit from it.

Senator Cook. But, Mr. Austin, let me ask you this:

You said last year 83,000 motorists applied to the assigned risk pool and 260,000 motorists elected to pay to the fund. In other words, they don't really have to place their name in the assigned risk pool if they elect to pay the \$35 since they are protected under the fund.

Mr. AUSTIN. They are not protected. It is the unsuspecting driver who happens to be injured or damaged by one of them that is protected.

Senator Cook. That may be true, but they are receiving the benefits of 10 and 20, are they not, by reason of paying the \$35 and now \$45?

Mr. AUSTIN. I would rather put it this way, if I may——

Senator Cook. Well, the fund might be able to collect from them but——

Mr. AUSTIN. An individual who is injured by one of these drivers will be able to collect the 10 and 20, but the uninsured motorist is not absolved of the responsibility to pay the 10 and 20.

Senator Cook. No, but you can have a lot of bankruptcies when you decide to try to collect it.

Mr. AUSTIN. So it is not insurance in that respect. Normally if you have liability insurance and pay your premium, the insurance company meets the claim and that is the end of it.

Senator Cook. Well, if somebody collects, \$20,000 from a man who has nothing but an automobile there is not really much of a chance of the fund ever collecting the \$20,000?

Mr. AUSTIN. Our experience has been a collection of somewhere between 10 and 12 percent of the claims we have paid out.

Senator Cook. All right. That kind of substantiates what we are talking about.

Mr. AUSTIN. Yes.

Senator Cook. What you really find in the range of 10 to 12 percent would be those drivers who probably have been denied coverage by reason of previous accidents, have not been given insurance in the assigned risk pool when it comes time for them to be licensed——

Mr. AUSTIN. Or they may have an alcohol problem.

Senator Cook. Yes. They wind up paying the \$35 or \$45, because they cannot get insured any place else, and happen to have assets. But you wouldn't suggest that you will be able to recover from most of the 260,000 motorists that elected to pay into the fund. You said you might be 10 to 12 percent successful in recovering directly from them?

Mr. AUSTIN. That's right.

Senator Cook. Thank you.

Senator HART. Senator Baker.

Senator BAKER. Mr. Chairman, thank you very much.

Let me instead of asking questions, which I would like to do, apologize to you for having been absent from these hearings from the necessity of having to chair hearings on S. 1113 for the last 6 days. I am very sorry to have missed this testimony. I will read it very carefully. S. 1113 is a piece of legislation to create national environ-

mental laboratories, so I feel it necessary to be present at those hearings.

Now I apologize to the witness for being late today, but assure him I intend to explore the points he makes very cogently in his statement and to try to make a further contribution to these hearings as you progress further.

I thank you for the opportunity and respectfully decline under those circumstances at this time.

Senator HART. Mr. Austin, in view of the exchanges we have had, is there anything you would like to add that you think might be helpful.

Mr. AUSTIN. One thing I would like to do is to leave you a few copies of our Motor Vehicle Claims Act and also some of the literature that we distribute in connection with the fund, in which we try to explain to the motorists that by paying the \$35 you are not acquiring insurance. You may be getting yourself into a lot of trouble. And also explaining why we ask the insured motorists contribute \$1 to the fund. I feel that unless you have more questions to ask that perhaps I should not take more of your time, except to thank you for giving me the opportunity.

I have only been in my office now 4 months, and there is a great deal more about this that I want to learn and I wish that I knew before sitting here. However, I think that perhaps the information that I have acquired has been useful. We believe very strongly that we need to revise our insurance program. And I have support of some 2,400 employees in the Department of State who have had experience with our insurance program in Michigan over a period of years; I have support of many other citizens in our State who believe that we need to revise this program. So I would like to end my comments by urging you to proceed with some national legislation.

Senator HART. Thank you very much for closing on that note.

May I depart from the witness list as scheduled with this explanation, and I apologize to my colleagues on the committee. I have not had an opportunity to discuss this with them.

Late last night, but not received by the staff until this morning, a telegram was received from Richard Markus, president of the American Trial Lawyers Association, asking for any opportunity to respond to the testimony of yesterday. While I am sure my colleagues would not want to establish as a precedent the claim of personal privilege, nonetheless I think under the circumstances we would want to give Mr. Markus this opportunity to testify.

**STATEMENT OF RICHARD M. MARKUS, PRESIDENT, AMERICAN TRIAL LAWYERS ASSOCIATION; ACCOMPANIED BY JERRY FINN, OF NEW JERSEY, CHAIRMAN, LEGISLATIVE SECTION**

Mr. MARKUS. Thank you very much, Senator Hart.

With the permission of the committee, I would like to offer a prepared statement which I have submitted to the committee, and be given an opportunity to paraphrase that statement, so I may express myself more adequately.

Senator HART. If there is no objection, we will have the statement printed in full and you may proceed.

Mr. MARKUS. May I also indicate I have brought with me Mr. Jerry Finn of New Jersey, who is the elected chairman of the legislative section of the American Trial Lawyers Association and the purpose of his presence, like my own, will be to answer any questions the committee may have.

Mr. Chairman, as you kindly pointed out, I did send a telegram to this committee requesting an opportunity to appear here, after I had learned that Robert Joost had testified before the committee as to certain activities of the American Trial Lawyers Association.

The committee has most graciously given me an opportunity to appear at this time.

I would like to begin by saying I am personally proud of the efforts of lawyers and lawyer associations who become involved in America's political process. For too long, the legislatures have been dominated—even controlled—by insurance interests and other special interest groups. Within the immediate past, lawyer groups have taken a more aggressive interest in expressing themselves politically by contacting legislative bodies. Where they believed that particular candidates stood for principles of good government, they have exercised their privilege—and their duty—to contribute their nondeductible after tax money to support the campaigns of such candidates. I believe our system of government could not function otherwise.

I only regret that the efforts of lawyers and lawyer groups have typically been politically too little and too late. Manufacturers, commercial trade associations, insurers, and unions are just a few special interest groups that expend far more time and money toward their own political goals. Lawyers—the kind that belong to the American Trial Lawyers Association—have usually been slow or unwilling to put themselves actively into the process that forms legislation.

Frankly, while they also represent a special interest group, I consider that their interests are usually closest to the interests of the general public. Our members are the consumer protection lawyers in the consumer protection cases, the civil rights counsel in the civil rights cases, the antipollution lawyers in environmental law cases. In auto injury cases, we are the lawyers for innocent victims—the maimed, widowed, and orphaned. We believe that we are the people's advocates.

The committee chose to inquire as to political activity by our members and our association. We suggest that the committee might wish to explore the unquestionably greater political pressures exerted by much larger and far stronger commercial interests. If our political power is that great, one might reasonably ask why public spirited legislation which we have consistently supported has made little progress in many legislative bodies.

In the automobile area, why haven't we succeeded in causing repeal of a single host-guest statute, which has been one of our principal goals in the last decade or more. Why do most States resist our call for replacement of contributory negligence with comparative negligence rules? Why do legislatures reject our demands to end governmental immunity, family immunity, and charitable immunity? Virtually every scholarly commentator agrees that our position on these issues is in the public interests. But, powerful commercial insurance interests have blocked this public legislation. Is it any wonder

that lawyers are finally waking up to their public duty to make some impact on government? For too long they have simply tried to apply and implement laws—including bad laws. Finally, they are trying to help make good laws—laws that are good for the public. I only hope that they can amass enough strength to help the public.

It was regrettable that Robert Joost was the medium through which this committee obtained information about our modest political activities, not because I would criticize him, but only because I would hope you would ask me, since I am in more complete control of information.

I personally testified before this committee on the previous day as the president of the American Trial Lawyers Association. I am pleased to answer any questions about those activities now. In fairness, however, I suggest that the committee may want to recall earlier witnesses—and particularly insurance industry witnesses to ask them how many men and how much money they have spent to promote no-fault schemes in the various States. We know of \$100,000 full-page ad campaigns by insurance interests in both Massachusetts and New Jersey. We estimate that insurers have spent at least \$10 million to convince the American public and State legislatures that no-fault programs designed for the insurers profit have public merit.

This committee has been kind enough to permit us to express our views on the merits of the present legislation. We hope that State legislatures give us a similar opportunity to express our views on the merits of related legislation. Actually, we should all be searching for legislation that best serves the public. We believe, from opinion polls cited by us in our earlier testimony and from our own experience in representing injured victims, that we are speaking in the public interest.

I can only supplement that prepared material with two or three brief comments.

First, reference was made by the testimony of Mr. Joost to a handbook, or I have forgotten the word he used to describe it, a book describing the key men meetings. We are rather proud of those key men meetings. This is an effort to give information to our members and other interested persons about legislative proposals that we think have a public impact. And I have with me the handbook that was referred to by Mr. Joost, which lists the legislation that is concerned.

First, advance payments by insurance carriers—skipping down through some of them—comparative negligence, discovery statutes and rulings, governmental immunity abolition, interest running on judgments, judges and judicial administration statutes, jury statutes, providing for nonunanimous civil verdicts, jury statutes implementing and improving jury selection, minimum insurance limit coverage, consumer protection legislation, environmental law protection, discrimination in housing and public accommodations, inadequate housing laws.

These are just some of the rules which we have been trying to promulgate in State legislatures in recent times. I repeat again that we are proud of these efforts and we do not apologize to anyone for them. We wish we could be more effective.

Now if the committee has any questions about any of the activities of our association, I would be most pleased, and Mr. Finn, the legislative section chairman, to the extent that I do not have the information, would be most pleased to supplement anything the committee is interested in.

Senator HART. Thanks, Mr. Markus.

The testimony yesterday from Mr. Joost was a strong criticism of the activities of the American Trial Lawyers Association with respect to no-fault legislation and he, I think, detailed the factors which persuaded him to speak as he did. But I saw it more as an analysis of the need for no-fault than an analysis of the failures of the American Trial Lawyers Association.

Mr. MARKUS. May I say, Mr. Chairman, so there will be no question about this: We are opposed to bad bills in State legislatures, we are opposed to bad bills in the United States Congress. We are in favor of good bills in State legislatures, we are in favor of good bills in the United States Congress.

I might add that in this context that leading trial lawyers in Illinois have supported a no-fault bill, that the official affiliates of this organization, the Colorado Trial Lawyers Association, has supported a no-fault bill in Colorado. We do not take a blanket position on anything. We believe it is necessary to look at legislation carefully, not to look at labels, not to look at general descriptions, but to examine specifically particular parts of legislation.

I noticed in reviewing very briefly Mr. Joost's testimony that he was highly critical of Governor Ogilvie's bill in Illinois, he was highly critical of the Massachusetts law, as we have been. He finds that there are some portions of the Senate bill 945 which are favorable. We also suggested that we found some portions of it favorable. We may disagree with him, we may disagree with Senator Hart or with anyone else, and I think we respect their right to differ with us, and I hope they respect our right to differ with them.

We are all looking for a common answer and we hope it is found in the public interest.

Senator HART. In pursuit of that common objective, let us have for the file a copy of the Colorado bill.

Mr. MARKUS. I do not have it with me.

Senator HART. I understand that.

And let us have the bill that the Illinois association supports.

Mr. MARKUS. I do not believe it is supported by any association. But I said leading trial lawyers have supported that legislation.

Senator HART. Without labeling it, let us have a copy of what it is.

Mr. MARKUS. Surely, we will be happy to provide it.

(The information follows:)

(LDO No. 71 1450/1—House Bill No. 1483—Business Affairs—Engrossed)

FIRST REGULAR SESSION, FORTY-EIGHTH GENERAL ASSEMBLY, STATE OF COLORADO

(By Representatives Gustafson, Strang, Horst, and Lamn)

A BILL for an act concerning motor vehicle insurance

*Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. Chapter 18, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

#### Article 25

##### MOTOR VEHICLE INSURANCE

13-25-1. *Short title.* This article shall be known and may be cited as the "Motor Vehicle Insurance Act".

13-25-2. *Legislative declaration.* The general assembly hereby declares that its purpose in enacting this article is to avoid inadequate compensation to victims

of automobile accidents and to require registrants of motor vehicles in this state to procure insurance covering legal liability arising out of ownership or use of such vehicles, and also providing benefits to persons occupying such vehicles, and to persons injured in incidents involving such vehicles.

**13-25-3. Definitions.** (1) As used in this article, unless the context otherwise requires:

(2) "Commissioner" means the commissioner of insurance.

(3) "Complying policy" means a policy of insurance approved by the commissioner of insurance and providing the coverages and subject to the terms and conditions required by this article.

(4) "Department" means the department of revenue acting directly or through its duly authorized officers and agents.

(5) "Director" means the executive director of the department of revenue.

(6) "Insured" means the named insured and relatives of the named insured who reside in the same household as the named insured.

(7) (a) "Motor vehicle" means:

(b) A private passenger automobile, including a sedan, station wagon, or Jeep-type automobile not used as a public livery conveyance for passengers;

(c) A utility automobile, including a pickup, sedan, delivery, or panel truck;

(d) A truck, including a tractor-trailer rig; and

(e) A self-propelled motor home.

(8) "Operator" means every person who is in actual physical control of a motor vehicle upon a highway.

(9) "Owner" means a person who holds the legal title of the vehicle; or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this vehicle.

(10) "Person" means every natural person, firm, partnership, association, or corporation.

**13-25-4. Administrative authority.** Except where specific administrative authority is conferred on the commissioner of insurance, the executive director of the department of revenue shall administer and enforce the provisions of this article, and may make rules and regulations in writing necessary for the administration of this article.

**13-25-5. Registration of vehicles.** (1) The director shall not register any motor vehicle unless and until the owner of such vehicle shall produce a certificate of self-insurance, or a certificate of insurance, on a form provided by the department, indicating he has insurance on such vehicle as provided by this article. Only policies validly issued by companies authorized to write in this state all the kinds of insurance embodied in the required coverages shall satisfy the requirements of this article.

**13-25-6. Minimum coverages required.** (1) (a) Subject to the limitations and exclusions authorized by this article, the minimum coverages required for compliance with this article are as follows:

(b) Indemnity for legal liability for bodily injury or death arising out of the use of the motor vehicle to a limit, exclusive of interest and costs, of fifteen thousand dollars to any one person, thirty thousand dollars to all persons, and five thousand dollars for property damage in any one accident;

(c) Compensation to injured persons for reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance, and prosthetic services, Christian Science care and treatment, loss of earnings, and extra expense for personal services not connected with his business or occupation which would have been performed by the injured person for himself or for members of his household, arising out of an accident involving the motor vehicle and incurred within *thirty-six* months of said accident, to limits of *fifteen* thousand dollars to any one person, and *thirty* thousand dollars to all persons, in any one accident.

**13-25-7. Direct benefits.** (1) The benefits described in section 13-25-6 (1) (c) shall be available to all persons occupying the described motor vehicle and all persons injured in accidents involving the described motor vehicle, except occupants of another motor vehicle.

(2) When a person injured is also an insured under a complying policy, his complying policy shall afford primary coverage for direct benefits under section 13-25-6 (1) (c), and the insurer under his policy shall respond in accordance with its terms and limitations. Any other complying policy under which such person shall be entitled to recover shall afford excess coverage, and, where more

than one such excess policy is involved, the excess coverage shall be prorated among the insurers on the excess policies.

**13-25-8. Elective reduction of benefits.** (1) At the election of the named insured, the benefits described in section 13-25-6 (1) (c) may be provided subject to deductibles, waiting periods, sublimits, percentage reductions, excess provisions, and similar reductions offered by insurers applicable to expenses incurred as a result of injury to the insured.

(2) To permit the insured to minimize, so far as is reasonably practical, duplication of benefits available through other insurance, contract rights, statutory benefits, and government benefit programs including but not limited to medicare and medicaid, the insurer selling coverage under this article shall determine whether the purchaser of coverage under this article desires to minimize duplication of such benefits. In the event the purchaser indicates a desire to minimize such duplication of benefits, it shall be the duty of the insurer to ascertain the other benefits available to the purchaser and to avoid duplication of such benefits by methods enumerated in subsection (1) of this section so far as such minimization of benefits is reasonably practical.

(3) The commissioner shall promulgate rules and regulations describing the various equivalent benefits which satisfy the requirements of subsection (2) of this section and providing for the ascertainment of desire to minimize duplicate benefits.

(4) Employers providing coverage under section 13-25-6 (1) (c) shall be permitted to elect deductibles, waiting periods, sublimits, percentage reductions, excess provisions, and similar reductions to avoid duplication of benefits provided by such employers to their employees through other insurance, including but not limited to accident and sickness insurance, workmen's compensation insurance, and contractual sick leave.

(5) Insurers issuing complying policies may not require reduction of benefits.

(6) Insurers issuing complying policies shall not be required to offer any particular form of reduction in benefits.

**13-25-9. Required coverages are minimum.** Nothing in this article shall be construed to prohibit the issuance of policies providing coverages more extensive than the minimum coverages required as a condition for registration, nor to require the segregation of such minimum coverages from other coverages in the same policy.

**13-25-10. Required provision.** Any complying policy shall contain a provision to the effect that, notwithstanding any of its other terms and conditions, the coverage afforded shall be at least as extensive as the minimum coverages required by this article.

**13-25-11. Conditions and exclusions.** (1) The coverage described in section 13-25-6 may be subject to the conditions and exclusions which are customary in the field of liability insurance and which are not inconsistent with the requirements of this article.

(2) (a) The coverage described in section 13-25-6 may also be subject to exclusions where the injured person:

(b) Causes injury to himself intentionally;

(c) Is operating a motor vehicle as a converter without a good faith belief that he is legally entitled to operate or use such vehicle;

(d) Is operating a motor vehicle while committing a felony.

**13-25-12. Subrogation.** (1) Insurers providing benefits described in section 13-25-6(1) (c) shall be subrogated to the rights of the person or persons for whom benefits are provided to the extent of benefits provided.

(2) Insurers seeking to recover pursuant to their subrogation rights under this section shall maintain any causes of action in the name of the insurer and not in the name of the insured.

(3) The subrogation claim of the insurer, whether based on the statutory subrogation right under this section or on contract, shall lie against parties alleged to be third-party tortfeasors and not against the person or persons for whom benefits are provided.

(4) Nothing hereunder shall be construed, however, to preclude an insurer providing benefits under section 13-25-6 (1) (c) from making a claim against the person or persons for whom benefits are provided in the event of fraud or material misrepresentation leading to the provision of benefits.

**13-25-13. No tort recovery for direct benefits.** (1) Any person eligible for benefits described in section 13-25-6 (1) (c) is precluded from pleading or introducing as evidence in an action for damages against a tort-feasor the amount of

benefits which would be recoverable under the coverages described in section 13-25-6 (1) (c), without regard to any elective reductions in such coverage, under section 13-25-8, whether or not such benefits are actually recovered.

(2) The limitation on tort recovery provided in subsection (1) of this section is confined to benefits required to be provided under section 13-25-6 (1) (c). Nothing hereunder shall be construed to preclude recovery in an action against a tort-feasor of benefits recoverable in excess of the minimum coverages required in section 13-25-6 (1) (c).

13-25-14. *Quarterly premium payments.* (1) Authority is hereby invested in the commissioner to issue rules and regulations establishing quarterly premium payments for persons who are required to purchase insurance under this article and who are qualifying low income persons as that term is defined in subsection (2) of this section.

(2) For purposes of this article a qualifying low income person shall include any registrant of a motor vehicle in this state other than an organization engaged in trade or business organized for charitable purposes and other than a dependent as that term is defined in the United States internal revenue code of 1954, as amended, except if such dependent receives more than one-half of his or her support from a person who qualifies as a qualifying low income person under this article, then such dependent may qualify as a qualifying low income person. A qualifying low income person shall include only those registrants whose annual adjusted gross income for federal income tax purposes shall fall within guidelines to be established by the commissioner. Such guidelines shall not be lower than the poverty determinations made annually by the United States department of labor.

13-25-15. *Financial responsibility law not applicable.* Persons who have valid insurance coverage in force complying with the requirements of this article shall be exempt from the duty to comply with the requirements of section 13-7-9 (1) of the "Motor Vehicle Financial Responsibility Act".

13-25-16. *Self-insurers.* (1) Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the director.

(2) The director may, in his discretion, upon the application of such person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay any and all judgments which may be obtained against such person. Upon not less than five days' notice and a hearing pursuant to such notice, the director may, upon reasonable grounds, cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

13-25-17. *Penalty.* Any person who is a resident of Colorado and who fails to have insurance as required by this article violates any provision of this article for which another penalty is not prescribed by law, is guilty of a misdemeanor and shall, upon conviction thereof, be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment.

Sec. 2. *Purpose—applicability—definitions—construction.* (1) The purpose of this act is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory, to prohibit price-fixing agreements and other anticompetitive behavior by insurers, to promote price competition among insurers, to provide rates that are responsive to competitive market conditions and to improve the availability and reliability of insurance. For such purposes the division of insurance of the department of regulatory agencies and the head of the division, the commissioner of insurance, shall be charged with the execution of this act.

(2) (a) This act shall apply to all kinds of insurance except:

(b) Reinsurance, other than joint reinsurance, as provided in sections 72-11-11 and 72-12-12, C.R.S. 1963;

(c) Workmen's compensation;

(d) Title insurance;

(e) Life insurance and annuities;

(f) Insurance against loss of or damage to aircraft and against liability with respect to aircraft;

(g) Life insurance and accident and health insurance;

(h) Assigned risk motor vehicle liability insurance.

(3) Articles 11 and 12 of chapter 72, C.R.S. 1963 as amended, to the extent not inconsistent with this act, shall apply to any rate regulation pursuant to this act,

and shall be specifically applicable under circumstances as set forth in subsection (2) (c) of section 3 of this act.

**SEC. 3. Standards for rates—competition—procedure.** (1) Rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers as measured by net profit. In determining whether rates comply with the foregoing standards, the commissioner shall consider insurers' earnings on investments of incurred loss and unearned premium reserves.

(2) The division of insurance shall promulgate rules and regulations setting a current reasonable margin of profit which shall be set in the first week of January of each year. Such margin of profit shall be set in order to determine excessiveness or inadequacy of rates, or unfairly discriminatory rates until such margin of profit is changed in accordance with this section.

(2) (a) Except as otherwise provided in this subsection or in subsection (3) of section 6 of this act, prior filing of rates, schedules of rates, rating plans, rating rules and rate manuals with the commissioner or his prior approval thereof shall not be required.

(b) No insurer or rating organization shall use a rating classification or territory unless it has been filed with the commissioner and either he has approved it, or ninety days have elapsed and he has not disapproved it as unfairly discriminatory or violative of public policy.

(c) If the commissioner determines, after a hearing and on the basis of findings of fact and conclusions, that, with respect to any territory or to any kind, subdivision, or class of insurance, competition is either insufficient to assure that rates will not be excessive, or so conducted as to be destructive of competition or detrimental to the solvency of insurers, he shall order that the rates for such insurance or territory shall be regulated pursuant to articles 11 and 12 of chapter 72, C.R.S. 1963, as amended. Such order shall have a specified duration of not more than one year but may be renewed by the commissioner upon appropriate findings of fact, conclusions, and order.

(3) No policy form shall be delivered or issued for delivery unless it has been filed with the commissioner and either he has approved it or thirty days have elapsed and he has not disapproved it as misleading or violative of public policy.

(4) Any requirement in subsections (2) (b) and (3) of this section of filing with or prior approval by the commissioner may be waived by regulation adopted by the commissioner after a public hearing.

(5) Rating classifications and territories and policy forms lawfully in use immediately prior to January 1, 1972, may continue to be used thereafter, notwithstanding the provisions of subsections (2) (b) and (3) of this section.

**Sec. 4. Hearings and judicial review.** (1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insured or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be written. If the request is not granted within thirty days after it is made, it may be treated as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If he finds that probable cause for the complaint does not exist or that the complaint is not made in good faith he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in subsection (2) of this section.

(2) If after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in subsection (1) of this section, the commissioner has good cause to believe that such insurer, organization, group, or association, or any rate, rating plan, or rating system made or used by any such insurer or rating organization, does not comply with the applicable requirements and standards of this article, he shall, unless he has good cause to believe such noncompliance is willful, give notice in writing to such insurer, organization, group, or association, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten days thereafter, in which such noncompliance shall

be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under subsection (3) of this section.

(3) If the commissioner has good cause to believe such noncompliance to be willful, or if within the period prescribed by the commissioner in the notice required by subsection (2) of this section the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith. Within a reasonable period or time, not less than ten days before the date of such hearing, he shall mail a written notice of the hearing to such insurer, organization, group, or association. The notice given under this subsection shall state in what manner and to what extent noncompliance is alleged to exist, and the matters to be considered at such hearing. The hearing shall not include subjects not specified in the notice. The hearing shall be conducted in accordance with section 3-16-4, C.R.S. 1963, and the commissioner shall have all the powers granted in said section.

(4) (a) If after a hearing pursuant to subsection (3) of this section, the commissioner finds:

(b) That any rate, rating plan, or rating system violates the provisions of this article applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists, and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited;

(c) That an insurer, rating organization, advisory organization, or a group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this article applicable to it other than the provisions dealing with rates, rating plans, or rating systems, he may issue an order to such insurer, organization, group, or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a specified time thereafter;

(d) That the violation of any of the provisions of this article applicable to it by any insurer or rating organization, which has been the subject of hearing, was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing;

(e) That any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization in addition to any other penalty provided in this article.

(5) In addition to other penalties provided by law, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, by an order of the commissioner lawfully made by him pursuant to this subsection (4).

(6) Any findings, determination, rule, ruling, or order made by the commissioner under this article shall be subject to judicial review, and proceedings on review shall be in accordance with the provisions of section 3-16-5, C.R.S. 1963.

**SEC. 5. Prohibition of anticompetitive behavior.** (1) (a) No insurer or rating organization shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize in any territory, the business of insurance of any kind, subdivision, or class thereof.

(b) No insurer or rating organization shall agree with any other insurer or rating organization to charge or adhere to any rate, although insurers and rating organizations may continue to exchange statistical information.

(c) No insurer or rating organization shall make any agreement with any other insurer, rating organization, or other person to restrain trade.

(d) No insurer or rating organization shall make any agreement with any other insurer, rating organization, or other person the effect of which may be substantially to lessen competition in any territory or in any kind, subdivision, or class of insurance.

(e) No insurer may acquire or retain any capital stock or assets of, or have any common management with, any other insurer or insurers, if the effect of

such acquisition, retention, or common management may be substantially to lessen competition in any territory or in any kind, subdivision, or class of insurance.

(f) No insurer or rating organization shall make any agreement with any other insurer or rating organization to refuse to deal with any person in connection with the sale of insurance.

(g) No rating organization or member or subscriber thereof shall interfere with the right of any insurer to make its rates independently of such rating organization or to charge rates different from the rates made by such rating organization.

(h) No member of or subscriber to a rating organization shall refuse to do business with, or prohibit or prevent the payment of commissions to, any licensed agent or broker on the ground that such agent or broker does business with an insurer which makes its rates, or any portion thereof, independently of such rating organization.

(i) Nothing contained in this act shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization, or as preventing any insurer, while a member of or subscriber to a rating organization, from making its own rates for any kind, subdivision or class of insurance, for which it does not elect to authorize the rating organization to act on its behalf.

(j) Any insurer which is a member of or subscriber to a rating organization may make its own rates for any kind, subdivision or class of insurance. No rating organizations shall have authority to act on behalf of any insurer which is a member of or subscriber to such rating organization except as authorized in writing by such member or subscriber, which authority may be supplemented, modified or revoked, in whole or in part, at any time by such member or subscriber at its option.

(k) No rating organization shall have or adopt any rule or exact any agreement, or formulate or engage in any program, the effect of which would be to require any member, subscriber, or other insurer to utilize some or all of its services, or to adhere to its rates, rating plans, rating systems, underwriting rules, or policy forms, or to prevent any insurer from acting independently.

(2) (a) Any rate made in violation of subsection (1) of this section shall be disapproved by the commissioner pursuant to the procedures prescribed in subsection (2) of section 7 of this act, and each violator shall be subject to the penalties provided in subsection (3) of said section 7.

(b) The commissioner, through the attorney general, and any person injured in his business or property by reason of anything forbidden in subsection (1) of this section may maintain an action to enjoin any violation of such subsection.

(c) Any person injured in his business or property by reason of anything forbidden in subsection (1) of this section may maintain an action and shall recover threefold the damages by him sustained.

**Sec. 6. Public disclosure.** (1) All policy forms and rating classifications and territories filed with the commissioner shall be available for public inspection at the division of insurance.

(2) Every rating organization and every insurer which makes its own rates, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge, as it may make, not to exceed one hundred dollars, shall furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(3) Every insurer and rating organization shall monthly furnish the commissioner all changes in the rating rules and schedules of rates such insurer or rating organization is then using in this state, and shall quarterly furnish the commissioner statistical, rating, and other information in support of changes in rating rules, schedules of rates, and rating classifications and territories. Such rules, schedules, and information shall be available for public inspection at the division of insurance.

**Sec. 7. Enforcement.** (1) The commissioner may, as often as he deems it expedient, examine any insurer or rating organization to ascertain whether its rating and underwriting practices are in accordance with law. Filed reports on examinations shall be available for public inspection at the division of insurance.

(2) (a) If the commissioner determines after a hearing that any rate used by an insurer does not comply with this act, he shall order that such rate be disapproved, and such order may include provision for premium adjustment.

(b) Pending a hearing, the commissioner may order the suspension, prospectively, of a rate used by an insurer and reimpose the last previous rate in effect,

in which event he must, unless the requirement is waived by the insurer, hold a hearing within fifteen days after such order. Within fifteen days after the close of the hearing the commissioner shall make his determination as to whether the rate should be disapproved.

(c) At any such hearing, the insurer shall have the burden of justifying the rate in question. All such determinations of the commissioner shall be on the basis of findings of fact and conclusions. If the commissioner disapproves a rate, the disapproval shall take effect not less than fifteen days after his order and the last previous rate in effect for the insurer shall be thereupon reimposed for a period of six months unless, prior thereto, the commissioner shall approve a different rate.

(3) If the commissioner, after notice and hearing, finds that any insurer, rating organization, or other person has violated this act, he shall order the payment of a penalty not to exceed fifty dollars for each such offense, and if he so finds that such insurer, rating organization, or other person knowingly violated this act, he shall order the payment of a further penalty not to exceed five hundred dollars for each such offense. The issuance, procurement, or negotiation of a single policy of insurance shall be deemed a separate offense.

**SEC. 8. Evaluation.** (1) The commissioner shall, from time to time, report to the governor and the general assembly evaluating the operation of this act, and shall submit a final report no later than March 1, 1975.

(2) The commissioner shall appoint a consumers advisory council to advise and assist him in evaluating the operation of this act pursuant to subsection (1) of this section.

**SEC. 9. Priority of act.** This act shall take precedence as to all types of insurance subject to its provisions, and the provisions of sections 72-11-2 (3) and 72-12-2 (a), C.R.S. 1963, allowing designations by insurers as to the applicability of laws, shall not be applicable with respect to this act.

**SEC. 10. Effective date.** This act shall take effect April 1, 1972.

**SEC. 11. Severability clause.** If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**SEC. 12. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

#### SYNOPSIS (CH. 73, ADDS PAR. 755B)

Amends Illinois Insurance Code. Requires, in all automobile liability policies issued after December 31, 1971, certain mandatory minimum benefits, including \$2,000 medical expenses and limited loss of income for disability. Provides for coverage of insured's family, guest passengers and pedestrians. Provides for arbitration of claims in certain circumstances. Denies subrogation to insurer for compensation paid to insured for damage to his own motor vehicle if such compensation does not exceed \$3,000. Provides for commission to study vehicle property damage problems and report to Governor by January 1, 1972.

LRB 4223-77

AN ACT to add Section 143b to the "Illinois Insurance Code", approved June 29, 1937, as amended

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

**SECTION. 1.** Section 143b is added to the "Illinois Insurance Code", approved June 29, 1937, as amended, the added Section to read as follows:

**Sec. 143b.** (1) *After December 31, 1971, every automobile liability policy covering any private passenger motor vehicle issued or delivered in this State on a non-fleet basis shall provide minimum hospital, medical and disability benefits to the person insured thereunder and members of his family residing in the same household who are injured in a motor vehicle accident, including guest passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle as follows:*

(a) *All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance, prosthetic, nursing and funeral services incurred within 6 months after the automobile accident up to an aggregate of \$2,000.*

(b) .85 percent of the loss of income from work for a period not exceeding 26 weeks, but not to exceed \$150 per week.

(c) All payments prescribed hereunder shall be made within 30 days after proof of loss has been submitted to the insurance company. Where losses can be reasonably presumed beyond a 90 day period, partial payments should be made no less often than every 30 days.

(2) Benefits as set forth in paragraph 1 shall be reduced or eliminated if they are similarly provided under any other type of insurance policy covering such injured person, or such person is entitled to benefits under the Workmen's Compensation Act, approved July 9, 1951, as now or hereafter amended, governmental benefits or gratuitous benefits. However, the existence of a cause of action in tort by such persons arising out of the accident does not relieve the insurer's obligation to pay benefits under this Section.

(3) The insurance company may exclude benefits to any injured person mentioned in paragraph 1, whether the named insured or another person covered under the policy, where such person was the operator of the insured vehicle and his conduct contributed to his injury in any of the following ways:

(a) intentionally causing injury to himself;

(b) operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;

(c) operating a motor vehicle without a license or after suspension or revocation of this license;

(d) operating a motor vehicle upon a bet or wager or in a race; and

(e) seeking to elude lawful apprehension or arrest by a police officer.

The benefits provided in paragraph 1 of this Section may also be excluded if the injury suffered is in an out-of-state accident by one who is not a named insured, not a member of the named insured's family residing in his household, and not a guest passenger in an automobile owned or operated by the named insured.

(4) Nothing in this Section prevents the insurance company from providing broader benefits than those minimum benefits described herein.

(5) If any person receiving benefits under the provisions of this Section files an action for damages for bodily injury or death arising out of the same automobile accident in any court in this State, such benefits shall not be disclosed to the court, or to the jury, if any. In the event of arbitration of such action such benefits may be disclosed to the arbitrators.

(6) In the event of any claim or legal action by the injured, as described in paragraph 1, against a third party, then the insuring company shall have a right of lien, upon notice by certified mail and return receipt, against the involved third party, and the injured party. The amounts paid out by the insurer to the injured party described in paragraph 1 are to be paid out on a loan-receipt basis and in the event the injured party, through a claim against a third party, recovers any amount by settlement, judgment or arbitration, then the insurance company shall be reimbursed in full from the amount recovered without deduction of fees or expenses of any type.

(7) In the event that the injured party as described in paragraph 1 brings legal action against an involved third party where the amount in controversy in such action is \$3,000 or less, then such action shall be arbitrated in accordance with the rules of the Supreme Court of Illinois when there is a determination by the Administrator of the Illinois courts that there exists unreasonable court delay in the judicial circuit where the action is commenced. The determination by the Court Administrator shall be conducted pursuant to Supreme Court rule. All arbitration awards shall be subject to trial de novo pursuant to Supreme Court rule. In the event of a trial de novo, the decision of the arbitrator shall be admissible in evidence. Arbitration shall not be required under this paragraph after June 30, 1975.

(8) In the event the injured party as described in paragraph 1 has not filed suit within 6 months of the injury or within 6 months of the last payment of benefits mentioned in paragraph 1, then the insurer may institute its own action under inter-company arbitration procedures when the amount in controversy is less than \$3,000 or by court arbitration pursuant to Supreme Court rules where the amount in controversy is more than \$3,000. The insurance companies involved may by agreement have inter-company arbitration without regard to any limit of the amount in controversy.

(9) All property damage claims where the amount in controversy is \$5,000 or less shall be arbitrated in accordance with the rules of the Supreme Court of Illinois when there is a determination by the Administrator of the Illinois Courts

that there exists unreasonable court delay in the judicial circuit where the action is commenced. The determination by the Court Administrator shall be conducted pursuant to Supreme Court rule.

(10) Notwithstanding anything in the insurance policy to the contrary, an insurer who makes payments to its insureds to compensate for damage to its insured's motor vehicle and equipment and property situated therein shall not be subrogated to the rights and causes of action which its insured may have against other persons for such damage unless the amount in controversy exceeds \$3,000.

(11) In any case where an insurance company has paid benefits accruing hereunder to a claimant injured by a person who is not covered by liability insurance provided by an insurer licensed to issue automobile liability insurance in this State, the company paying such benefits shall, to the extent of such payments, be subrogated to any right of action for damages by the claimant against such person.

(12) Benefits provided under this Section may be deducted from any recovery received by an injured person under uninsured motorists coverage as defined by Section 143a of this Code.

(13) The Governor shall, by executive order, establish a study commission, composed of 7 members, to investigate ways and means of reducing the current magnitude of automobile property damage costs sustained by claimants and paid for by insurance companies. The commission shall report its recommendations to the Governor by January 1, 1972.

#### SYNOPSIS (CH. 110, PAR. 2)

Amends the Civil Practice Act to provide that the Supreme Court may provide for the arbitration of civil cases where the amount in controversy is less than \$5,000. Arbitrators shall be chosen by the court from a list of attorneys. Any party may appeal from the award of the arbitrators.

#### LRB 4224-77

AN ACT to amend Section 2 of the "Civil Practice Act", approved June 23, 1933, as amended

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. Section 2 of the "Civil Practice Act," approved June 23, 1933, as amended, is amended to read as follows:

SEC. 2. Power of courts to make rules. (1) The Supreme Court of this State has power to make rules of pleading, practice and procedure for the circuit, Appellate and Supreme Courts supplementary to but not inconsistent with the provisions of this Act, and to amend the same, for the purpose of making this Act effective for the convenient administration of justice, and otherwise simplifying judicial procedure, and power to make rules governing pleading, practice and procedure in respect of small claims, including service of process in connection therewith. Unless otherwise indicated by the text, references in this Act to rules are to rules of the Supreme Court.

The Supreme Court of this State has the power to make rules providing for the arbitration of any case filed in the circuit court where the amount in controversy shall not exceed \$3,000, exclusive of interest and costs. The Supreme Court shall maintain a list of attorneys who have agreed in writing to serve as arbitrators, subject to the right of each attorney to refuse to serve in a particular assigned case, and subject further to the right of any party to show good cause why an appointed arbitrator should not serve in any case to which he is assigned. The rules shall provide that any case, subject to arbitration, shall be assigned for hearing to a single arbitrator selected by the court from the list of arbitrators in reasonable rotation. Arbitration proceedings may also be assigned to any associate judge or circuit court judge. Cases not at issue and controversies not filed in any court may be referred to arbitration by an agreement of reference signed by counsel for both sides in the case of controversy. The agreement of reference shall define the issues involved for determination in the arbitration and may also contain stipulations with respect to agreed facts, issues, or defenses. In such cases, the agreement of reference shall take the place of the pleadings in the case and be filed of record.

*The rules may provide for the taking of evidence in the form of reports, statements, itemized bills, or in any other manner without the procedural and evidentiary limitations which obtain in jury trials.*

*The arbitration award shall be in writing, signed by the arbitrator, and filed with the court. The award shall be entered by the court in its record of judgments, and shall have the effect of a judgment upon the parties unless reversed upon appeal. Any party may appeal from the arbitration award to the court in which the award is entered by filing, within the time limited by rule of court, a demand for trial de novo on law and fact.*

*Each arbitrator who is not a member of the judiciary shall be paid \$35 per day for each day necessarily expended by him in the hearing and determination of the case. The compensation of the arbitrator shall be paid by the county, in which the court has jurisdiction, from its general revenues and shall not be taxed as costs. Upon appeal, at the time of filing the demand for trial de novo, and as a condition of filing, the appellant shall deposit a cash sum equal to the total award with the clerk of the circuit court of the county. The appellant shall also deposit a cash sum equal to the total compensation of the arbitrator, but not exceed 10% of the amount in controversy, which sum shall be forthwith repaid to the county.*

(2) Subject to rules the circuit and Appellate Courts may make rules regulating their dockets, calendars, and business.

Senator HART. And Mr. Joost, in addition to a variety of points he called to our attention, was speaking also, I think, to the point of the need for Federal rather than State-by-State approach. As you say, we can agree or disagree with that point of view, but he was explaining why, in his judgment, it was essential.

Mr. MARKUS. If I may comment on that, Senator Hart, if one were to ask me whether I would like a bad Federal bill or a bad State bill, I would say that is a choice between arsenic or cyanide. The only decision I have to make is whether it is a good bill, not whether it is Federal or State.

Senator HART. To the specific point you made in your brief statement that perhaps we should have asked you rather than Mr. Joost about LIFT and ADOPT, it is my recollection we did ask you about both.

Mr. MARKUS. Yes, and I believe I very candidly gave all of the information that I thought was requested.

I would be happy to give you any further information if anybody wishes it. Again we are very proud of this involvement by lawyers in the political process. Frankly we wish it were more effective.

I can say, however, in that context, that I understand the Texas Legislature finally adopted some of the legislation which we think the public considers desirable, without regard to the no-fault discussion, such as comparative negligence, this sort of thing. And I think most of the members of this committee would agree that is good legislation.

Regrettably the Governor has vetoed that legislation and the newspaper story that followed Mr. Joost's testimony would suggest that all of the legislators in Texas are somehow in the employ of trial lawyers. Obviously that is foolish, and it is only harmful to good legislation.

Senator HART. I think he said the batting average was six out of eight supported were elected. But I wouldn't want anybody to go down my campaign contribution list and conclude I was therefore an agent of anybody. He was just making a point, however, that I think is supported factually. And we did ask you about the Federal-State relations program.

Mr. MARKUS. And I believe I answered with the same completeness.

If there are any further questions, I would be happy to answer further. I have no question—

**Senator HART.** Do you dispute any of the facts that Mr. Joost gave us?

**Mr. MARKUS.** I believe that some of the statements, if the Senator requests, are, I think overstatements and I would prefer, unless the Senator really wishes me to, I would prefer not to quibble with him. I think he suggested, for example, that lawyers claim to have control over various legislative bodies. I have had occasion to talk to other people who were at those meetings and who unequivocally denied that is true. The lawyers have said they believe their position was being given greater favor in certain legislative bodies, but I have never met a lawyer who claimed any lawyer or lawyer group controlled any legislative body. In fact, as the Senator I am sure knows, lawyers are considered an anathema, are considered persona non grata in most legislative conclaves, because they are always looked at with aspersions.

**Senator HART.** Senator Cook?

**Senator COOK.** Well, Mr. Markus, I think there are some things that we ought to get straightened out. They make good print, but for instance he stated, "when I was hired by the American Trial Lawyers Association in 1967, I had to agree to make no further public statements in opposition to the position of the association on no-fault."

If in fact that was the position of the American Trial Lawyers Association, and it was a strong position of the association, that is not an unheard of request, is it?

**Mr. MARKUS.** Actually, Senator, I would think it would not be an unheard of request, but I don't believe it was made. To the best of my knowledge no such request has ever been made to any staff member. To the best of my knowledge our staff members are individuals who have a right to express their opinions. Obviously if they are going to say our association is doing wrong things, we would prefer they not do it while they are employees of the association.

**Senator COOK.** I doubt seriously any member of the Senate would hire somebody as a staff member who would disagree totally with the Senator as to what he put in his monthly letter.

**Mr. MARKUS.** No, and I might say to the best of my knowledge, from my limited contact with Mr. Joost, I always thought his position was substantially similar to that of the association. I he had a contrary position, he did not explain it to me.

**Senator COOK.** Mr. Finn, if at the meeting in Chicago you said let's all adopt the program you referred to as LIFT, and no one disagreed, there doesn't seem to really be anything wrong with that, does there?

**Mr. FINN.** Senator Cook, I may not have used those words. I am in favor of lawyer participation to the extent that President Markus has indicated. I think it is a laudable thing that all citizens interest themselves in good government.

**Senator COOK.** Mr. Chairman, as you may remember, I didn't totally agree with all of the language, but I did put into the record a resolution of the Kentucky Bar Association which just met and unanimously adopted a resolution opposed to no-fault insurance.

I don't know what political machinations have been going on within the confines of the Kentucky Bar Association, but I somehow or other feel that if a bar association in meeting at a State convention takes that position, that resolution should be put into the record. I am not quite sure whether there are any political activities in the Ken-

tucky Bar Association in that regard or not, but I don't find, whether I agree with them or not, that there is anything wrong with a bar association taking that position. Neither am I sure that that position relies totally and completely on the fact that all of those lawyers in that room were negligence lawyers and all of those lawyers came to the conclusion that this somehow or other was going to take them out of the fat womb, as the witness yesterday said, of collecting all of the money from negligence cases in the automobile industry. Would you?

Mr. MARKUS. Senator Cook, I would like to strengthen what you are saying, if I can, by saying that whenever our governing body has met, to the best of my recollection, if anyone dared to suggest that we should take any position because it was in the self-interest of our members or our association, he would be promptly excluded from the room. We have rather strongly felt—

Senator HART. He would be sent to an insane asylum, wouldn't he?

Mr. MARKUS. Senator, seriously, if someone from our group said we should favor something that is against the public interest, we could not countenance that. We very strongly consider we are the people's advocates and we cannot countenance anything which we think is against the public interest.

Mr. FINN. If I may, Senator Hart, I would just like to comment on part of the testimony yesterday which related to the keymen meetings. I am likewise proud of these keymen meetings. I was the one who set them up. During the meetings of the past year, my first year as national legislative chairman, no discussion was held at any time with reference to no-fault.

Senator HART. I beg your pardon, I missed that.

Mr. FINN. During my first year, last year, as national legislative chairman of the American Trial Lawyers Association, no discussion was held at any of those meetings with regard to no fault. Those meetings were full day meetings, in the cities indicated in yesterday's testimony, those meetings dealt solely with the matters which were indicated by president Markus, and at least half of those meetings were devoted to an intensive investigation and discussion of private remedy statutes, particularly consumer protection laws, environmental protection laws, discrimination laws, and inadequate housing laws.

Senator HART. I am not sure it would be useful to go through fact by fact the statement—

Mr. MARKUS. If the Senator wishes to, I will be pleased to comment on any of them; we have no secrets.

Senator HART. I find Mr. Joost's prepared statement, he is talking about the key men meetings. The 1971 meetings were devoted exclusively to how to defeat no fault at both the State and Federal levels.

Mr. FINN. May I explain that? I was referring to the series of five meetings held last year in Cambridge, Mass., Atlanta, Ga., Las Vegas, Nev.; Denver, Colo.; and Chicago, Ill. That was during last year.

This year there have been two keymen meetings held, one in Cambridge, Mass., and one in Chicago. Both of those meetings did deal with no-fault legislation.

Senator HART. So his statement with respect to 1971 is correct.

Mr. FINN. There have been two such meetings; yes, not five.

Senator HART. Because politicians are always explaining fees that they receive or in some cases decline, and since you would know, what is your arrangement with Prof. David Sargent of Suffolk University.

Mr. FINN. To the best of my knowledge, Professor Sargent is paid for his travel expense and I believe also an honorarium, generally by the group that has invited him, which is usually local groups. It is not funded from the association. I believe it is done the same way Professor Keeton of Harvard Law School and Prof. Jeffery O'Connell of Illinois are treated. They also appear at seminar programs, usually taking the opposite position.

May I supplement that statement, Senator, because Professor Sargent was mentioned yesterday in the testimony of Mr. Joost. Professor Sargent is an outstanding professor and he was a member of the original study commission participated in by Professors Keeton and O'Connell, and he was one of the closest men to that study. He, during the course of that study concluded that no-fault legislation was not in the public interest. And he has been a dedicated advocate against no-fault legislation, based on principle. The implication that he is a hired hand is terribly unfair.

Senator HART. The witness yesterday did—and I have to paraphrase—but did describe the professor as an able, keen student in the field. He did make that point. This is what he said :

Dave Sargent—I see no objection to his appearance or to his being paid. David Sargent is a very able professor. He has a view on the subject matter that demands the most careful and complete discussion, but I do find it less than honorable that Professor Sargent appears wearing his Suffolk hat rather than the Trial Lawyers' hat, and his audiences are not told who is paying him nor how much.

I suppose that could be said of anybody who wears the academic badge, but who is paid by an interest. Whether he speaks out of principle or out of hire. It gets to the point where the politician himself has found it is much more prudent to disclose and let the public evaluate in light of how big the fee is.

Mr. MARKUS. As I said before, Senator, like other academicians who appear at the request of local groups, it is common that they are paid their travel expense and I guess an honorarium that has some relationship to their own time. Though I do not have the factual knowledge, I have every reason to believe that Prof. Robert Keeton and Prof. Jeffery O'Connell who take the opposite position are similarly treated by similar local groups and I do not criticize them for that. Indeed I have considerable esteem for both of them.

I am a classmate of Professor O'Connell and when we have appeared on debates together, I have always said since graduation one of us has gone wrong and we are not quite sure which.

Senator COOK. Mr. Markus, doesn't it impress you to be just as dishonorable to work for an association and put forth all of your time and effort within the framework of that association and totally disagree with the position of that association?

Mr. MARKUS. I prefer not to comment, Senator.

Senator HART. At one of the keymen meetings, recent keymen meetings—maybe Mr. Finn was present—somebody was complaining that Sargent's rates were going up. The delegate said he is now asking \$500.

Mr. MARKUS. I have no knowledge of what Professor Sargent's honorarium is. I know on occasions I have heard of high honorariums for other academicians; I have no idea what he expects. I know that I usually don't get any.

Senator HART. Perhaps Mr. Finn knows whether that comment was made in his presence?

Mr. FINN. That comment was made. I don't know if it was made in his presence. I can't remember, Senator Hart, who made the comment.

The meeting in Chicago was designed to cover the Midwest part of the country and the area which was covered extended as far as, I think, Iowa, and it may be if Professor Sargent was called upon to travel across the country, taking a considerable amount more of time than if he had come to Washington, the honorarium may have been increased by virtue of that fact. I do not have any direct knowledge of what was paid and by whom. I do know that Professor Sargent was invited to debate in New Jersey, that he was paid an honorarium for his appearance in New Jersey, and that the American Trial Lawyers Association did not pay that honorarium.

Senator HART. Just this last one as a point of information. Referring again to Mr. Joost's testimony, he says that at that meeting, a meeting of the trial lawyers in Chicago on April 24, the executive committee of the American Trial Lawyers Association unanimously approved a resolution creating a completely new department, the department of Federal-State relations with a proposed budget for the fiscal year to begin April 1 of \$322,200. Is that correct?

Mr. MARKUS. I presided over that meeting and I can give you rather accurate information as to what occurred.

Senator HART. Let me conclude his statement—

Mr. MARKUS. He was not present at that meeting.

Senator HART. He said:

I was notified. The Executive Committee voted to finance the budget for this new department by (1) reducing the budget of the Department of Public Affairs and Education by \$112,000 and by dues increases expected to net an additional \$200,000. As part of the cutback in the Public Affairs and Education Department, its Director was ordered to dismiss, the only lawyer, at the end of the fiscal year, and Mr. Caldwell and two additional staff members. The director of the new Department of Federal-State Relations, a department incidentally which goes from nonexistence to becoming the largest department, consuming 25 percent of the Association's total budget, the director will be Mr. Allen Locke. Mr. Locke is not a lawyer, but his brother, Barry Locke, is an aide to Secretary Volpe.

Are there any inaccuracies in that?

Mr. MARKUS. There are considerable inaccuracies. And I don't criticize Mr. Joost. He has no reason to know the accurate information. He was not present at the meeting, he wouldn't be expected to be present at the meeting and he is supplying the information from hearsay.

First, it is correct that the executive committee recommended to the budget committee who would then subsequently recommend to the board of governors, and that meets in 2 weeks, and who will, if they agree, subsequently recommend to the general membership, who must approve, at Portland, Oreg. this summer, a budgetary change. That budgetary change, which is so far in the recommending stage, and in no way the approved stage, would describe some activities that are

already performed by the organization, and rechannel the jurisdiction in which those are handled. They would transfer from what are now the public affairs department to another department that would take over some responsibilities handled now by the public affairs department, certain activities which were called I believe, for lack of a better name, Federal-State relations. Mr. Allen Locke, who was referred to, was considered as one possible person who would not head that department, but who would work in that department. And I might say his previous experience has been in our continuing legal education program, he has been helping to run the seminars that we have been giving to lawyers, not on political matters, but on how to help them be better lawyers.

Since he has done so across the country, he has gotten to know many lawyers and the thought was he would be a good person to help with State organizations, in developing the State organizations and in developing their relationship with the national organization, that would be his function.

With reference to the—I don't recall whether any other personnel were described in this. Again if the committee wants me to, I will be happy to describe all of the personnel involved in these things. There are no secrets.

Senator HART. He said it was a proposed budget. Does that reflect the proposed budget?

Mr. MARKUS. The numbers he stated are close. They are not precise. As I say, they do not represent a great new activity, rather a shift of jurisdiction over activity, and to an extent an increase in that activity. I might say that we are hoping to provide to this Congress people who will be able to communicate with the Congress, and find out whether there are questions that we feel very competent people can help provide answers to. I might say I consider myself one of those, and that myself and others who have studied this want to be able to communicate our position and our thoughts and our factual information to the Congress. We will also be using what we think will be helpful people to assist the Congress in understanding our position and we hope in drafting good legislation, and not Mr. Allen Locke. That is not his function.

Senator HART. You are communicating well, and yesterday Mr. Joost communicated well, at least on my wave length.

Senator Cook?

Senator Cook. Mr. Markus and Mr. Finn, your activities are no different than the activities which have been carried on for years and years by the AMA, and of more recent vintage by those groups who opposed the SST, I expect. I might suggest to you they are no different—I see some smiles from the press table—they are no different than the newspaper industry which right now is talking to everybody on the Hill because it is proposed that the mailing rate for newspapers take a substantial increase shortly. They are very, very disturbed about this, and they say this is really going to hurt them. Yet, they have been mailing out 100 newspapers for what it costs you and I to send one letter.

So these activities don't seem to be any different, do they?

Mr. MARKUS. Only in size. I am afraid we can't compete with any of those groups that you have described. I am afraid we cannot pro-

vide the personnel or the funds that they have done. I might say, however, that your last example is one that strikes me particularly at home. It seems to me that to say a lawyer should not be listened to because some lawyers' financial interests are affected is the same as saying that a newspaperman should not be heard to defend freedom of press.

We think we should be heard to defend the rights of individuals.

Senator COOK. This is one of my real arguments with that industry, because they are the only industry in the United States that is not subject to the child labor laws. They have always been excluded from the child labor laws and it has always seemed rather strange to me that an industry which editorially, at least, and sometimes on the front pages, is very critical of some thing that can go on, employs 14- and 15-year-old youngsters to get your newspaper to you in the morning. I only make the comparison because I think however much Mr. Joost enjoyed writing this letter and thought it was a tremendous uncovering episode, you are not here to criticize the gentleman who testified yesterday.

Mr. MARKUS. No.

Senator HART. He had every right to testify and say what he wanted to say?

Mr. MARKUS. Absolutely.

Senator COOK. You are not defending yourself against his testimony?

Mr. MARKUS. That is correct.

Senator COOK. You merely indicate that your basic purpose is to promote what you feel the majority of your organization feels. They feel the proposed legislation before this committee needs a great deal of work. If you took a poll of your members and I note that Mr. Joost said the lawyers in the organization have never been polled, what position do you think it would reflect in your organization.

Mr. MARKUS. I think I can give you a relatively accurate answer. First I can tell you the manner in which our association takes positions is by action of the board of governors who are elected by the members in a geographical fashion, so they are representative. On the basis of the correspondence I have received as president, and on the basis of my conversations with members, my estimate is that if we were to take a poll, the vote would be about 99 to 1 in favor of our position.

Senator COOK. Then you are backing up the position of your association?

Mr. MARKUS. Absolutely.

Senator COOK. And if yesterday's witness did not in any way agree, then he had every right to come here and he had every right to express himself and you have every right to terminate his services?

Mr. MARKUS. I must say, Mr. Senator, we did not terminate his service because of his testimony. His services were terminated prior to that time. We had no knowledge of his intention to present testimony. We terminated his service because of budget, fiscal reasons, that had nothing to do with his position on any subject whatever. We were unaware of his position on this subject.

I do not know whether that has anything to do with his testimony. I only say we were not aware of it at the time he was terminated.

Mr. FINN. May I add, Senator, that I wish I could find the ways or means of disabusing those who are interested in this legislation of

their misconception that the American Trial Lawyers Association is in opposition to this legislation based on selfish, personal interest. The American trial lawyers are opposed to this legislation on one basis alone: We are sincerely convinced that this legislation is not in the public interest.

Senator Cook. Thank you, Mr. Chairman.

Senator HART. Senator Baker?

Senator BAKER. No questions, Mr. Chairman.

Senator HART. I would characterize the testimony of Mr. Joost yesterday not as an exposé of the trial lawyers association, but rather as an explanation of why he believes that we ought to approach the problem of insurance reform.

Specifically, he favors no-fault, on a Federal rather than a State by State approach. There were many other reasons assigned, but included among them was the degree to which the State units could be influenced as a consequence.

Mr. MARKUS. Senator, I only wish I had the confidence that he apparently expressed in our legislative strengths in the various States. I am afraid I don't have that confidence. I wish I did, because I think we are speaking in the public interest.

Senator Cook. The only addition I would want to make to your comment, Mr. Chairman, is that I noted from his testimony that when he was first called by the staff he did not feel that this should be done on a Federal basis but on a State-by-State basis. It was apparently during the course of time that his position was being eliminated that he agonized, thought very, very seriously, and then came to the conclusion that it ought to be done on a Federal basis. His position prior to that time, and all of the time that he had been agonizing with the problem of no-fault, was it should be handled on a State basis and it should not be federally regulated. Apparently, since he was called a month ago, it has only been during the last 2 or 3 weeks, because he finally agonized to the extent that he thought it should be done on a Federal basis, whereas all of those thoughts prior to that time had been it should be handled on a State-by-State basis.

Senator HART. Gentlemen, thank you.

Mr. MARKUS. Thank you for this opportunity, Senator.

Senator HART. Returning now to our scheduled list of witnesses, let me welcome the dean of the Law School of the University of Washington, Dean Richard Roddis.

Dean, the chairman of the committee, Senator Magnuson, had hoped very much to be able to get over before you went on and asked me in the event that he was not able to make it, that I extend his welcome.

I should add that the dean has served as the insurance commissioner of the State of California.

#### STATEMENT OF RICHARD RODDIS, DEAN, UNIVERSITY OF WASHINGTON SCHOOL OF LAW, SEATTLE, WASH.

Mr. RODDIS. Thank you very much, Senator.

You have already indicated a little bit about my background and I won't repeat it. I was also at various other times in the private practice of law in San Diego, Calif., and a deputy attorney general of California.

I think I should also mention two other connections. I was a member of the advisory committee on economic regulation to the automobile insurance and compensation study of the Department of Transportation.

Also I am a director of a mutual property and casualty insurance company.

My views in this matter, of course, are unaffected by any of my professional or other affiliations, and I do not represent or reflect any position or interests other than my own. I might add that is an understatement if you observe some people's reaction to my views.

It is an honor for me to have been asked to appear before you.

My remarks will be directed to S. 945, a bill by Senators Hart and Magnuson to enact a Uniform Motor Vehicle Insurance Act. Though I am certainly not an expert, or at least not as expert on the subject as many other people, it is a subject in which I have had a considerable interest from various perspectives for some years and to which I have devoted some attention.

Over a period of time I have gradually, and I think with some reluctance, come to the conclusion that the methods by which we compensate the victims of automobile accidents of this country are incongruous in theory and unacceptable in performance.

The present system is commonly referred to as the fault liability insurance system. The deficiencies and weaknesses in the system have been chronicled in a host of studies, in endless hearings, and in the common experience of thousands of people. I do not propose to burden you with further detailed offers of proof.

However, I would like to at least enumerate some of the problem areas that I perceive. The present system is anachronistic, operating neither as an effective nor systematic implementation of the policy of social morality which supposedly dominates its tort law aspect, nor the compensation objective which has become dominant in its insurance aspect.

It is inefficient in the distribution of benefits and uneconomical in its exaction of exorbitant costs. It allocates benefits unevenly and inequitably. It unduly burdens the judicial system and diverts its scarce resources away from other imperative responsibilities. It fosters an array of undesirable attitudes and practices on the part of claimants, lawyers, and insurers.

Despite the theoretical claims made by its adherence that it promotes driver care and highway safety, there is considerable evidence that those characteristics of driver psychology and behavior which are really significant in accident causation are largely unaffected by the imposition of fault liability.

Moreover, the record of the years does not suggest that the present system creates in itself any particularly salient pressures for the effective accomplishment of other desirable social objectives, such as safety in vehicle design, emphasis on physical and psychological rehabilitation of seriously injured victims or control of medical and other loss costs.

Indeed what progress has been made in recent years in these areas has been the result of pressures, either independent of or at least purely incidental to the operation of the fault system. Hopefully one can construct a new system which will create more enduring internal pressures for efficiency, economy, loss prevention and control, and rehabilitation.

The present system has posed chronically intractable problems to those concerned with its insurance aspects. The construction of rating and underwriting systems which are at once economically sound, competitively viable, and publicly acceptable, has proven to be beyond our ken, despite many years of the application of devoted ingenuity by legions of casualty actuaries and other experts. I have tried to make the point on many occasions to insurance groups that the basic problem in the rating and underwriting of automobile insurance is that the very things which make the most economic sense from the standpoint of the insurer are bound to be hopelessly unacceptable in the public consciousness.

Most seriously of all, the ills and failures of the system have jeopardized not only the economic health and public confidence in the private insurance economy, but have diminished public respect for the law and for lawyers. It is little wonder so many of us have come to the point where we find it difficult to criticize or oppose just about any of the myriad of changes, whether called palliative, remedial or radical reformist which have been proposed or implemented in recent years. Just about anything is an improvement.

Having said all of this, I want to make two observations about my attitude toward the subject generally.

First, as is probably evident from what I have said so far, I tend to view the problems involved as being essentially systemic.

That is, I believe that the central cause of many of the problems is the incongruity of the combination of a tort liability based on a fault concept, as the theoretical basis for reparations, with an insurance mechanism ostensibly designed to indemnify the liability of tortfeasors, but now in fact generally perceived as oriented primarily toward the objective of broadly distributing the financial costs of assured compensation for injured persons, while yet confining the disparity of premium levels with bearable limits for the average consumer.

Senator BAKER. Since you do not have a written statement, would you reread that statement for me again?

Mr. RODDIS. Yes, sir. I believe that the central cause of many of the problems is the incongruity of the combination of a tort liability, based on a fault concept, as the theoretical basis for reparations, with an insurance mechanism ostensibly designed to indemnify that liability of the tortfeasors, but now in fact generally perceived, both by the public and by legislatures and by the courts I might add increasingly, as functionally oriented primarily toward a social objective of broad distribution of the financial costs of compensation for everyone, while at the same time trying to confine the disparity in premium levels within bearable limits.

Senator BAKER. May I ask a question to make sure I understand that, Mr. Chairman?

The thrust of your remark is that the indemnification aspect of the tort system is no longer the principal basis for compensation, but rather we have an equivalent no-fault system now, the cost of which is borne by the policyholders, rather than by the public generally?

Mr. RODDIS. A dualism of those two things. We persist in adhering to a legal conceptualism based on fault but increasingly we have overlaid it at the insurance level with what amounts to a compensation-oriented treatment. Yes.

Senator BAKER. You mean by the assigned risk pool, by financial responsibility acts, the Michigan system, and others. Is that the reason we now have a compensation system instead of a tort and indemnity system?

Mr. RODDIS. A whole array of things. In the first place, the increasing pressure to put more and more and higher and higher first-party benefits into the coverage. Second, the whole array of judicial precedents which you might say tend to favor the claimant.

Senator BAKER. They tend to diminish the actual cause and effect of the tort concept.

Mr. RODDIS. Yes, all of these things diminish the actual significance of the fault concept, yet leaves the fault concept there, and it becomes an irritant, it becomes a pressure for a kind of adversary relationship, and it becomes a confusing pressure, too.

Senator BAKER. I might refine that, and I won't pursue it further, Mr. Chairman, but I want to be sure I clearly understand.

Mr. RODDIS. I have a few more remarks about it anyway.

Senator BAKER. Let me make sure I am attuned to your frequency on this.

As a rule, the remnant and vestige of the negligence system and the tort concept, coupled with indemnification, form the basis for compensation in this field, coupled with the overlay of a number of factors such as judicial precedents and State statutes, custom, usage, and probably public attitude, so that we in effect have so distorted and diluted or at least changed the tort system and the causal relationship between negligence and indemnification, that we really do not have a fault system now. We have something between a fault system and a no-fault system already without realizing it.

Mr. RODDIS. Yes, sir, that is a good summary.

Senator BAKER. And we have not appropriately reapportioned costs in response to this change in the system.

Mr. RODDIS. Moreover, you continue, you might say, a melded or combined system on a haphazard basis, with all of its cost implications and its implications in terms of frictions and dissatisfactions, and you might say counterincentives to various people within the system.

Senator BAKER. And the delay in bringing cases to trial and disposing of them probably promotes the incentive to settle to the point where it intensifies the no-fault character of the system as well?

Mr. RODDIS. Yes, sir.

Senator BAKER. Thank you, Mr. Chairman.

Mr. RODDIS. We have sought to meld two different and largely inconsistent social objectives into a single integrated system. That the results of such an attempt would be unsatisfactory would almost be expectable simply as an analytic proposition, even without the proof of sad experience. It is this pervasive tension between fault-based reparations ideology and full compensation expectation that actually creates many of the problems of the present system, for it casts upon the various human and institutional components of the system an array of inconsistent roles, it creates unnecessarily adversary relationships, it fosters incentives for undesirable behavior, and it unduly proliferates the legal decision points and uncertainties.

Hence, unlike many people, I do not attribute the problem to the greed or incompetence or bad faith of lawyers or adjusters or agents or

insurance company managers. I recognize that human frailty contributes to the problem and will be a problem under any system, but it is not the dominant cause of our present circumstances, for in my experience most people in all of these groups have been honest and conscientious and well-intentioned.

Many urge that we should seek to accomplish both objectives, unlimited reparations based on fault with a pain and suffering damage element and adequate compensation for all. The pressures for that very result are evident both in the evolution which the present system has already undergone and in the provisions of many of the proposals for reform, including, I might add, S. 945.

If this is what we do, though, I think that we need to make the policy decisions consciously, for the consequences are significant. One consequence is the escalation of costs to unacceptable levels; and another is the array of compromises and resulting frictions in the accomplishment of either objective which the specter of cost overburden forces.

This is exactly what has been happening in the evolution of the present system, and I might add will be compounded by many of the limited reform measures now being advocated. Personally I believe, and I am not a philosopher or psychologist, that public satisfaction, in a sense public happiness, with an institutional mechanism is better promoted by clearer commitment to a primary purpose and concentration on seeing that that goal is accomplished to maximum effect.

Second, I am not a utopian; I recognize some of the problems which exist are intrinsic to the automobile environment in this country and either will exist under any reparations system or must be solved by measures independent of a loss allocation and distribution mechanism.

Moreover, there are a diversity of legitimate interests and viewpoints entitled to consideration which I recognize the political process must accommodate. Yet the fact that any proposal, therefore, will be vulnerable to criticism from some quarter should not deter action.

Now I want to turn to a discussion of some considerations relative to S. 945, the bill presented by Senators Hart and Magnuson. Initially let me say I admire those who drafted the bill. It displays a great deal of ingenuity in concept and drafting. There are many provisions in it which I think are very, very good. There are three aspects which I wish to specifically discuss. I also have a number of more or less technical comments about it which I can supply to the committee staff in letter or other written form.

The three points I want to talk about briefly are:

- (1) The accommodation which the bill makes between first-party compensation theory and the retention of a fault-based tort liability;
- (2) The provisions included in the bill calculated to assure the availability of automobile insurance; and
- (3) the question of the appropriateness of a Federal law as opposed to awaiting solutions at the State level.

On the first point I am something of a purist in that I prefer to move as far as possible in the direction of a pure compensation approach. Ideally I would abolish the fault-based liability and the right to unlimited damages for pain and suffering altogether; however, I recognize the powerful emotional and other pressures involved and do not oppose reasonable compromise. However, the approach taken by

the bill I think has some defects, particularly in that it retains too much room for litigation of a customary type in the catastrophic harm area. It does not provide adequate direct compensation.

Specifically I would suggest the following pattern of modifications:

(1) Amend the section on compensable earnings loss, which is (2) (c), to do these things:

(a) Raise the required minimum limits to \$1,500 per month and 48 months or \$48,000. I apologize for that—it would have to be 48 times \$1,500.

(b) Redefine the compensable earnings loss so as to cover all present and expectable loss or diminution of earnings and then define expectable lost earnings as present earnings except to the extent that circumstances clearly demonstrate the probability that higher levels would be achieved. This is to take care of two problems: First, a person who has low or no present earnings but a clear short-range expectation of entering or substantially improving himself in the remunerated labor force; for example, the student; and second, the factor of inflationary increases in wage rates.

(c) Permit insurers to stipulate in the policy with the primary insured and those whom he may reasonably be regarded as representing as to the actual potential lost earnings.

(d) Amend section 2(12) (a) to add a provision reducing net economic loss by an amount equal to 80 percent of earnings from any substitute occupation.

(2) Define catastrophic harm somewhat differently so as to dovetail more precisely with the direct compensation section; that is, define permanent and total or partial disability as disability extending 48 months, or 30 months if you retain the present limit, and as including disfigurement.

(3) Limit the damages recoverable for economic loss due to catastrophic harm so as to exclude any earnings loss factor within the 48-month or 30-month period.

Second, I want to turn to a discussion of the provisions designed to assure the wide availability of automobile insurance. These provisions have the not inconsiderable virtue of simplicity. Essentially the bill imposes a duty on all auto insurers to write every risk submitted.

I am reluctant to criticize the approach, for it accords with a view I have entertained for some time that our present system has created too many competitive pressures for overly selective underwriting, and that it should be possible to create an environment in which insurers may reasonably be expected to make their product generally available to all at appropriate prices. However, I fear that the section as it stands now is apt to have undesirable collateral consequences within the insurance economy.

First, and apart from everything else, I think that this approach is feasible only if the Congress also preempts out State rate regulation. Under a law of this type, I think rate regulation probably will be unnecessary. The bill has a number of sound provisions built into it designed to enhance independent ratemaking and transparency of the market so that competition may be effective at the consumer level.

These provisions could be fortified by making auto insurance explicitly subject to Federal antitrust laws.

To impose a Federal duty to write every risk submitted, and leave the insurers exposed to the vagaries of State rate regulations, is an invitation to disaster.

If rate regulation were eventually demonstrated to be necessary, I would prefer to lodge the power in the Secretary of Transportation.

Second, and apart from the rate regulation problem, the provision for the availability of insurance will create other dislocations. It will severely affect specialty carriers, some of which have done a very good job and are geared to deal only with their special areas of competence.

Senator BAKER. Like who?

Mr. RODDIS. United Service Auto, for example.

Moreover it will strike hardest at those insurers which so far have been doing the best job of supplying the markets.

It will encourage various rather elementary business manipulations on the part of insurer managements calculated to reduce the impact of the provision on them. And I do not mean to imply, incidentally, that the techniques which would occur to me would be wrongful; indeed I think they would almost be forced upon management from an economic standpoint.

I suggest either of two alternate approaches.

First, retain the present approach, but do these things: (a) Permit insurers to file with the Secretary designations of classes, kinds, or territories of business which they do not choose to write. I would empower the Secretary to promulgate rules and regulations to control such filings, in order to prevent targeting. (b) Permit an insurer to file at any time a statement that it has suspended writing automobile insurance until a further rescinding filing could not be made for, say, at least 90 days.

A second and entirely different approach would be to abandon the provision requiring every insurer to write every risk, and create a federally chartered public corporation, jointly owned by the Government and by all automobile insurers, with power to assess the insurers.

The corporation could write business generally on a businesslike basis and would be specifically enjoined to see that all markets were supplied. Such an insurer could serve two functions: First, to assure the availability of auto insurance and, second, to control rates by the so-called yardstick method of rate regulation.

A final comment in this connection: Apart from everything else, and even if you don't change the bill in any other regard, you should amend section 5(b) (2), which is the one that says that the only circumstances under which an insurer may refrain from accepting further applications is if its domiciliary commissioner has made a written finding that to do so would impair its solvency, should be amended to use a test other than solvency; something like hazard or unsoundness. The word "solvency" poses some technical problems that will make it absolutely unworkable.

Finally, I want to comment on the question of the propriety of Federal as opposed to a State solution. I think a Federal bill is needed. First, all of the factors are present which have conventionally and historically been thought to render a subject appropriate for the exercise of the congressional power to deal with interstate commerce on a uniform national basis.

In other words, there is really nothing so terribly remarkable about what is being proposed in this bill, to have a Federal solution. The auto, if you will forgive a bad pun, is very mobile. Many accidents have immediate multi-State implications. Moreover, the economic consequences are clearly national in scope. The sheer magnitude of the financial stakes establish this fact, if nothing else does.

The next factor is that the States are not apt to act with any great rapidity or uniformity. The real problem in my view is not so much the fact we might go through a period in which we have some States with first-party laws and others with the conventional fault-based tort liability system.

I think if it were merely a two-way dispersion, in other words, if there were really just two choices, we could live with it. But the greater problem is the likelihood that a wide array of diverse plans will emerge among the States. There are a host of subissues involved in the problem. Moreover, there are numerous groups which have an interest in the matter and the relative positions of legislative influence among these groups vary remarkably from State to State.

Hence I think it is likely that we will see a pattern of the emergence of a wide variety of solutions at the State level and that emergence of numerous variable plans will create serious problems from legal and insurance standpoints, as well as bewilderment and dissatisfaction in the public mind.

You know I sometimes think that it is lawyers and legislators that think a lot more about State lines than people do generally today. The average person I don't think really thinks that things ought to be so different simply because he drives from one State to another.

The problem is aggravated by the fact that the applicable choice of law rules have become murky in recent years. When I was in law school, and I suspect that when those other gentlemen here who were lawyers were in law school, the conflict-of-laws people had the problem of choice of law in accident cases fairly simple, the law of the place of the accident pretty well controlled.

I am not a conflict-of-laws man, but my understanding is that in recent years the courts and the legal scholars have devoted a great deal of attention to confusing the situation and have evolved a doctrinal position that pays a lot of attention to the aggregate of contacts, and other such tests, and clearly creates an incentive to a proliferation of forum shopping litigation.

I think that given that kind of a context, as to the choice of law principle involved, and the emergence of a wide variety of statutory plans among the States, we would find ourselves with some very serious legal and insurance problems. That completes my intended testimony.

As I said, I have a number of other comments which I will try to submit to the committee by letter or in some other form. I appreciate the opportunity of having been here.

Thank you.

Senator HART. Dean, thank you very much.

We will welcome and accept your offer of help with some of the technical points that you want us to focus on.

I said this yesterday, let me repeat it: I appreciate very much your commendation to the draftsman of this bill. I don't want to imply that Senator Magnuson didn't write it in longhand, but I sure didn't.

But it gives both of us an opportunity to tell those men who did the drafting that in your judgment it is technically a good job. On that conflict-of-law thing, I am a conflict-of-law man in the sense that I took a course on conflicts, at a time when you described the situation as relatively clear.

It was never clear to me even then, and if it has gotten worse, then we will certainly have to do something.

Senator Cook?

Senator Cook. Dean, I must say your statement has been kind of refreshing to me.

First of all, I think you totally disagree with many of the remarks that have been made previously that somehow or other under a fault system this automatically makes a driver more careful. I think you refute it, and I think you refute it well.

As a matter of fact, I think the fear of having one's policy cancelled is a far greater fear to make someone a better driver than the fact that he may find himself within the confines of the fault, tort liability machinations of the present legal system.

Secondly, in your colloquy with Senator Baker, you point out to those who argue that you are tampering with the tort liability system, that unfortunately that system has become relegated to the system of insurability and it has become second place, not first place.

I think we as lawyers should admit that tort liability existed long, long before the lawyer had to find out before he filed that lawsuit whether there was a degree of insurability.

I think you made this point very well. I really think you ought to be commended for this.

Let me ask you, under a no-fault system which retains for the benefit of its citizens the tort liability facilities and availabilities, do you foresee any constitutional questions involved in such a program?

Mr. Robbins. I think not at the Federal level. There may be State constitutional provisions that would be a problem in some States, at the State level. That could be, in fact, another reason for suggesting the desirability of Federal legislation as being the only practical way of overriding some potentially applicable State provisions.

For example, my recollection is that the New York Constitution has what amounts to a constitutional guarantee. I think of either jury trial or simply nonimpairment of the right to a cause of action for wrongful death. For that reason, for example, in the New York plan, variously called the Stewart plan or Rockefeller plan, they had to exclude wrongful deaths, because of apprehensions about their own State constitutional provision.

Senator Cook. There is one thing you did say that seems to defeat the purpose of what we are discussing today rather than enhance it. That is the ability of a carrier to notify the Secretary relative to your proposition to permit a carrier to exclude types of insurance and areas.

Now, if this is available to one carrier, obviously it is available to all carriers. If we get into this business of even giving a 90-day or 60-day period of eliminating the ability to write coverage, aren't we really defeating the purpose for which these hearings are being conducted?

Unless we immediately say in that same regard, and I don't mean to prolong the question, that whenever this is done in a given area, if

there is no coverage available, it automatically goes to a Federal corporation which would immediately have to step in and render coverage within that 90-day period.

Obviously, we do not want to find ourselves in a position where a given area by reason of types or by reason of area was going to be totally excluded from the availability of coverage.

Mr. Robbins. My thought had been that this right which I would propose giving to the insurers would be rather severely delimited by the suggestion I also made that the amendments should include the conferring on the Secretary of a power to regulate the exercise of that device pursuant to rules and regulations he might adopt to prevent abuse.

I would think you could confer a regulatory power under standards that would be broad enough to avoid the consequences you are apprehending.

Let's take a simple thing for an example. Suppose you did give them the possibility of territorial exclusion. If I were the Secretary and had the regulatory power, I might say no territorial exclusion shall be less than, say, an area of 50 square miles or perhaps even maybe a State or a half a State, something like that. The point being that I would prevent them from this business of red lining out, or targeting areas or something like that.

By the same token, as to classes of business, I wouldn't let them say we aren't going to write unmarried women under 25 or something like that. What I am thinking of is the power to say we write only motorcycle insurance, we won't write any automobiles, or we write, like United Services Auto, we write only this class of business, I think there it is defined probably as military officers, retired officers, and reservists.

I think it would be possible by regulation to control any abuse of this right, and you won't have enough companies that fit these different kinds of categories or think of themselves as doing so to block out a whole area.

Moreover, once they make that filing, they can't write any risks in that category. It isn't a right to get out from under the duty to accept all risks if they write that category at all. They have to make an either/or selection. If they say this is an area in which we do not choose to write, then they can't write anything.

They could voluntarily say we will suspend all writings for a period of time. I think that is far superior to having them running down to convince the insurance commissioner that they are going to go broke if they write any more insurance.

Senator Cook. I am little concerned with the explanation, because I am wondering if carriers could be eliminated from particular areas, you might be creating a monopolistic system within those same areas.

Mr. Robbins. I think that the number and size of automobile insurers operating broadly, both at the national level and locally and regionally, is such that there would always be adequate numbers. Now, I will agree this can become involved with one other point I tried to make and that is what I perceive is the need to abrogate State rate regulation.

In a sense if you don't abrogate State rate regulation, I would think you almost have to have the kind of power I am proposing on the

part of the carriers. Otherwise the distortions you build into the insurance economy nationally will be something to see.

Senator Cook. You think it would be necessary to preempt.

Mr. RODDIS. Yes. But it would be the failure to preempt that would be the only thing that I can think of that would lead to the kind of situation you are apprehending, and that situation would arise if you did not preempt, that is if you permitted State rate regulation, and you had a State insurance commissioner who said to himself: "This is the best of all worlds. The Federal Government says they have to write every risk, and I control the rates."

If he suppresses the rates below reasonable levels, as has on some occasions been done historically in various States, you could get a situation where carriers in the apprehension of the consequences of that would frankly have to make a filing blocking out that whole State. Now, however, that is another good reason for giving them that right, because if you don't given them that right, they will have to turn to withdrawal from the State, perhaps cutting off the writing of other valuable lines in which they are engaged.

Senator Cook. As a consequence of investing the authority in the Secretary to either allow or disallow, based on an application, an insurance company to continue or to classify or to delete areas, I think we just automatically have to follow on the idea of a preemption of rates. I do not think that determination could be handled at this level logically unless you also had control over the structure that applied to that area. Wouldn't that really follow?

Mr. RODDIS. Well, I did not suggest preemption of the rate regulatory power in the sense that you necessarily have to have the Secretary do it. I think, myself, that under this kind of a law, and the insurance economy that I would hope would emerge under this, that you could preempt in the sense that you knock out State rate regulation and rely upon competition and the Federal antitrust laws to be a reasonable governor of price.

If that proved to be unsatisfactory, it was my statement that I would then prefer to have the Secretary control the rates rather than the States. And I agree that I think the coexistence of a federally imposed duty to write every risk with the continuance of State rate regulation is going to be a very unsatisfactory combination.

Senator Cook. One other question. You did not address yourself to one section of the bill that gives me a great deal of concern and that is 3(b), where:

No State shall require the purchase or acquisition of insurance or any other security as a condition to the operation or use of any motor vehicle upon the public streets, roads and highways of such state, other than the insurance required under Section 5 of this Act.

Do you foresee, if such a section were to stay in the bill, that if a no-fault were to be perfected by this committee it would have to be of unlimited consequence?

Mr. RODDIS. No, I do not have that problem with it. But that was one of the sections I was going to comment on in the letter under the general heading of technical and other comments.

I really don't understand the point of that section. I see no reason why an individual State should not be permitted to legally require additional coverages that do not detract from or impair the purpose or effect of the Federal requirement.

In other words, I would not permit a State, I suppose, to do something that was really inconsistent with the purpose of the Federal bill, but I do not understand why the States should be prohibited from requiring reasonable additional coverages.

Senator Cook. Don't you think that with such a section, and the fact that the States conceivably could not act if this section stayed, the consuming public, with the retention of the tort liability feature, might be lulled into minimum coverage and consequently find themselves in a horribly dangerous position if they found themselves brought into court on a matter that far exceeded any coverage that could reasonably be presented in a Federal statute?

Mr. RODDIS. Well, no; I do not think that is the problem, because my recollection is the section, or one of the other sections, does specifically permit optional liability insurance with reference to this catastrophic harm liability. So at least that particular problem would not arise. But there could be other things.

Senator Cook. Suppose an insurance company's options only went so far?

Mr. RODDIS. Oh, I see what you mean. In other words, suppose the Secretary approved a policy that had limited coverage—

Senator Cook. I heard Mr. Sutcliffe say that he cannot, but if he is going to regulate and make these determinations—

Mr. SUTCLIFFE. There is a requirement in the bill that the insurer has to offer the optional coverage.

Senator Cook. Of at least \$50,000 for any one person, \$300,000 for all persons. We have judgments that have been rendered in the last 30 days that make \$300,000 look like peanuts.

Mr. SUTCLIFFE. But the present limits in the States are \$10,000 and \$20,000 for liability.

Senator Cook. The only point I am making is you are putting a limit on the upward side, and they are putting a limit on the downward side. They may require \$10,000 and \$20,000—

Mr. SUTCLIFFE. I think it could be improved a great deal, Senator.

Mr. RODDIS. I agree with you, Senator Cook, on that matter. This was one of the provisions that bothered me. I see no reason why the States should be prevented from requiring at least reasonable additional coverages if they felt that the interests of their citizens so indicated. And one of the illustrations would be to require higher limits.

Senator Cook. One of the greatest examples would be property damage, which this bill does not require.

Mr. RODDIS. Yes. The things that occurred to me were, one, property damage liability insurance, and the other really would be the idea of making the optional coverage mandatory.

I hate to see, as long as you are going to have this liability for catastrophic harm, I hate to see the States in effect forced back from the requirement that some of them have that you have to have that kind of coverage.

So basically I am in agreement with you on this whole matter.

Senator Cook. Mr. Chairman, I have to say I find his remarks very refreshing and I think they add a great deal.

Thank you very much.

Mr. RODDIS. Thank you, Senator.

Senator HART. I certainly share Senator Cook's feeling that what you have told us this morning is going to be, as we attempt to work through this thing, extremely helpful and referred to often.

As a matter of fact, I wish we had had the chance to have it in front of us.

Mr. RODDIS. And I apologize for that.

Senator HART. I appreciate Senator Baker's twice asking for a runthrough of that one long sentence.

Senator Baker?

Senator BAKER. Thank you, Mr. Chairman. I join you and Senator Cook in commending the witness for a very meaningful statement.

I must say that one of the difficulties that comes from not having been at these hearings on each day is trying to understand the statute, so if the witness will bear with me I would like to get down to some fundamental questions he raised.

Is it fair to say in the broadest terms that the situation we have today in the tort system as it relates to the automobile situation is an insurance industry that provides indemnification under a modified tort system and that the thrust of S. 945 is to eliminate some patent inequities in that system and to serve a secondary purpose, a social purpose, of relieving pain, suffering, anguish, and lack of compensation in cases where there is not a traditional response in the tort liability system; and, third, if we do that, to provide a new system of regulation? Is that the broadest scope of the presentation of S. 945?

Mr. RODDIS. Yes; if that includes the idea that I suppose the basic thing here is to eliminate, at least to the extent that you do impose a required direct first-party compensation system, the play of the fault liability concept altogether.

You see the problem I was trying to identify earlier is that the problems arise from the present sort of hodgepodge meld of fault theology and compensation insurance. Though it is true that the system is moving more and more in the compensation direction as a practical matter, the residue of fault theory pervading the thing is what creates so many problems.

You have an insurance mechanism, for example, that doesn't even go the right way contractually. The insured is the tortfeasor, yet the person increasingly viewed as the real beneficiary of the insurance is not someone that is indemnified against the liability, but rather the third-party claimant.

Senator BAKER. If I might be so presumptuous as to caution the dean of a distinguished law school to be careful not to misunderstand what I am saying, I am not criticizing the bill. I am groping for the fundamental principles involved. What you have suggested is that there is a moral issue involved in the lack of direct responsiveness or privity between the injured party and the insurance carrier. That, of course, launches into category 2 that I tried to described, which is the social issue involved.

I am trying to establish if we are in fact talking about three separate and only slightly related issues: One, the insurance industry's relationship to the indemnification aspects of the court system in the United States; two, whether or not we are concerned with the

necessity, if any, for providing additional response above the negligence system on a human and social basis, that is, compensation without fault, directly to the injured party and many other applications; and three, if the answer to two is yes, whether we are completely and totally changing the relationship of the industry to the public and the Government to the point where extensive reordering of regulation of the insurance industry will be mandatory, not desirable, but mandatory?

I ask you, if you will let me, to come back and correct me or agree or disagree on any of those three categories of concern in this field. Then it will lead me to two or three other questions.

I say, again, I am not implying disagreement with any aspects of S. 945, I am not yet dealing with nuts and bolts. I am trying to get my fundamental thinking straight in this field.

Mr. RODDIS. I think your statement of the issues is very good. You said independent issues. I view them as more interrelated.

First, you say—

Senator BAKER. Indemnification and response to the tort system.

Mr. RODDIS. It would do that. It would create a first-party kind of insurance relationship. So that is a basic thing this bill does.

No. 2, it clearly does move heavily, though, as I indicated in my testimony, not as heavily as I would prefer, in the direction of a pure compensation without regard to fault approach, and that is obviously a social policy judgment. There is no question about it.

Senator BAKER. Having little if any relationship to point 1, the tort system?

Mr. RODDIS. No; I stick to the principle that all of these issues are closely interrelated, and that is for one single reason if no other, and that is cost. There is no escape from the cake-and-eat-it-too problem.

Senator BAKER. Not really. That is a semantic difference between you and me, I think.

I am saying they are not related on the theory that the tort system awards indemnification or reparation or compensation only when there is negligence causally connected with the loss or injury, while the no-fault concept is based on humanitarian and social concerns, having no relationship to the causal connection between negligence and responsibility for damages.

Mr. RODDIS. I apologize for not seeing your point sooner. You are saying these issues are severable issues as a matter of philosophy or theory; yes, that is true.

Senator BAKER. And one of them has to do with the modification of the tort concept as a part of the generic laws of the United States and the laws of the States, and the other has to do with the pressures for social change and the response Congress makes to that. They are only slightly related. In policy and principle they are not related at all.

As a practical matter they are closely related because the similarity of the events, more often than not, will both occur in an automobile accident, and in cost it is sometimes difficult to distinguish what is a direct response and what isn't a direct response to tort liability. This, by the way, gets back to the extraordinary point you made when you pointed out, as I never thought of it before, that we can in effect judicially legislate the no-fault system with the evolution and development of the tort law as we know it.

And, point three, if we answer two in the affirmative, we have to do some radical surgery on the system.

Mr. RODDIS. I guess it is on three that I have perhaps a more limited view. As I have indicated, this particular bill has some provisions in it which I think do substantially affect at least the rate regulatory function and I think they are desirable effects on that. Partly they are required, however, by the attempt in the bill to deal with the availability of insurance problems, rather than these other problems.

I once had the theory that it really was not necessary to have any particularly great impact on the basic regulatory pattern simply to enact a Federal no-fault, first-party kind of legislation. My position for some time has been that basically all that was needed at the Federal level was to rewrite the tort law involved, that is the basic principle of liability, and require the needed first-party insurance that is the substitute for the present system and then leave it to the private industry and to the States to respond to that new legal environment, which I think American industry tends to do rather well.

In other words, my point is that the congressional function was to recreate the legal environment, and I thought if you did that the right way, most of the other things would flow from it.

Now, this bill has things in it that I guess require or provide more assumption at the Federal level of the regulatory function; and I do not disagree with those provisions, in fact I think maybe they are sound, but even those I do not think will displace the State regulatory system nearly as much as you might think.

Senator BAKER. What I am really groping for in these broad categories, and defining the areas of concern in the bill, is to determine whether the most basic judgment that must be made by the Congress is whether we are going to fund the demands of category 1 and category 2 out of the user concept by adding it to rates and charges of the insurance industry, or whether we are going to respond partly from the insurance industry and partly from the general treasury, that is, either for social or human considerations.

For example, in the case of an automobile accident where there is no-fault, and still there are parties who may suffer and be unable to work for long periods of time, it is theoretically possible to compensate those people through medicare or medicaid and it is also possible to compensate them from other benefits.

It is the old question of whether or not we make the user pay or the treasury pay. We stretch it over the entire public domain or limit it to a particular segment of the industry. That would require further examination on my part to decide whether or not category 2, that is the human and social considerations, the no-fault aspect of the problem, ought to be taken care of by the user or ought to be more broad-based.

It really gets down to the continuing conflict, the philosophical confrontation in Congress between trust funds and general treasury funds.

Do you care to disagree with that as a description of the most fundamental question we have to raise if we decide something has to be done?

Mr. RODDIS. You touch on a point that I think is very interesting and a fundamental one; yes. I guess as long as I was setting up a sys-

necessity, if any, for providing additional response above the negligence system on a human and social basis, that is, compensation without fault, directly to the injured party and many other applications; and three, if the answer to two is yes, whether we are completely and totally changing the relationship of the industry to the public and the Government to the point where extensive reordering of regulation of the insurance industry will be mandatory, not desirable, but mandatory?

I ask you, if you will let me, to come back and correct me or agree or disagree on any of those three categories of concern in this field. Then it will lead me to two or three other questions.

I say, again, I am not implying disagreement with any aspects of S. 945, I am not yet dealing with nuts and bolts. I am trying to get my fundamental thinking straight in this field.

Mr. RODDIS. I think your statement of the issues is very good. You said independent issues. I view them as more interrelated.

First, you say—

Senator BAKER. Indemnification and response to the tort system.

Mr. RODDIS. It would do that. It would create a first-party kind of insurance relationship. So that is a basic thing this bill does.

No. 2, it clearly does move heavily, though, as I indicated in my testimony, not as heavily as I would prefer, in the direction of a pure compensation without regard to fault approach, and that is obviously a social policy judgment. There is no question about it.

Senator BAKER. Having little if any relationship to point 1, the tort system?

Mr. RODDIS. No; I stick to the principle that all of these issues are closely interrelated, and that is for one single reason if no other, and that is cost. There is no escape from the cake-and-eat-it-too problem.

Senator BAKER. Not really. That is a semantic difference between you and me, I think.

I am saying they are not related on the theory that the tort system awards indemnification or reparation or compensation only when there is negligence causally connected with the loss or injury, while the no-fault concept is based on humanitarian and social concerns, having no relationship to the causal connection between negligence and responsibility for damages.

Mr. RODDIS. I apologize for not seeing your point sooner. You are saying these issues are severable issues as a matter of philosophy or theory; yes, that is true.

Senator BAKER. And one of them has to do with the modification of the tort concept as a part of the generic laws of the United States and the laws of the States, and the other has to do with the pressures for social change and the response Congress makes to that. They are only slightly related. In policy and principle they are not related at all.

As a practical matter they are closely related because the similarity of the events, more often than not, will both occur in an automobile accident, and in cost it is sometimes difficult to distinguish what is a direct response and what isn't a direct response to tort liability. This, by the way, gets back to the extraordinary point you made when you pointed out, as I never thought of it before, that we can in effect judicially legislate the no-fault system with the evolution and development of the tort law as we know it.

And, point three. if we answer two in the affirmative, we have to do some radical surgery on the system.

Mr. RODDIS. I guess it is on three that I have perhaps a more limited view. As I have indicated, this particular bill has some provisions in it which I think do substantially affect at least the rate regulatory function and I think they are desirable effects on that. Partly they are required, however, by the attempt in the bill to deal with the availability of insurance problems, rather than these other problems.

I once had the theory that it really was not necessary to have any particularly great impact on the basic regulatory pattern simply to enact a Federal no-fault, first-party kind of legislation. My position for some time has been that basically all that was needed at the Federal level was to rewrite the tort law involved, that is the basic principle of liability, and require the needed first-party insurance that is the substitute for the present system and then leave it to the private industry and to the States to respond to that new legal environment, which I think American industry tends to do rather well.

In other words, my point is that the congressional function was to recreate the legal environment, and I thought if you did that the right way, most of the other things would flow from it.

Now, this bill has things in it that I guess require or provide more assumption at the Federal level of the regulatory function; and I do not disagree with those provisions, in fact I think maybe they are sound, but even those I do not think will displace the State regulatory system nearly as much as you might think.

Senator BAKER. What I am really groping for in these broad categories, and defining the areas of concern in the bill, is to determine whether the most basic judgment that must be made by the Congress is whether we are going to fund the demands of category 1 and category 2 out of the user concept by adding it to rates and charges of the insurance industry, or whether we are going to respond partly from the insurance industry and partly from the general treasury, that is, either for social or human considerations.

For example, in the case of an automobile accident where there is no-fault, and still there are parties who may suffer and be unable to work for long periods of time, it is theoretically possible to compensate those people through medicare or medicaid and it is also possible to compensate them from other benefits.

It is the old question of whether or not we make the user pay or the treasury pay. We stretch it over the entire public domain or limit it to a particular segment of the industry. That would require further examination on my part to decide whether or not category 2, that is the human and social considerations, the no-fault aspect of the problem, ought to be taken care of by the user or ought to be more broad-based.

It really gets down to the continuing conflict, the philosophical confrontation in Congress between trust funds and general treasury funds.

Do you care to disagree with that as a description of the most fundamental question we have to raise if we decide something has to be done?

Mr. RODDIS. You touch on a point that I think is very interesting and a fundamental one; yes. I guess as long as I was setting up a sys-

tem to provide either compensation or tort reparations, either one, for automobile-injured people, and that is all I was doing, I would try to internalize the costs to the system.

In other words, I think it is fair that the enterprise of automobiling, or as my friend Stewart uses the quaint phrase "motoring," should bear its own cost burdens as fully as possible, whether they be of a compensation nature or a fault-based nature.

Now, I think the thing your suggestion really brings to light is a thought I have had and expressed on a number of occasions, and that is you hear the argument made from time to time that one reason you should not do anything in this area is the dilemma posed by the question of why we should have a legal system that provides full compensation without fault to people who become injured or disabled in auto accidents, where if they fall off a ladder at home they do not have that kind of benefit.

Of course one answer I always give is the purely pragmatic one that quantitatively, and in the public perception, auto accidents are a bigger problem and it is no excuse for not dealing with a problem that you do not go all of the way and deal with everything.

But there is a certain analytic suggestion to that argument, and I have thought for some time that one thing that may really take attention away from this whole auto accident reparations problem if something is not done fairly fast, is it may become swallowed up one of these days by a wider movement for a total medical care and disability benefits system on a national scale.

Of course, if that occurred, you would be talking about funding it through a much broader mechanism than automobile insurance.

Senator BAKER. We may be talking about some future speculative date in history when we have accumulated a considerable amount of money in a Federal trust fund to be a reinsurer of the insurance industry or pay direct claims or the like. Somebody will come along and say we ought not to spend this money for interstate highways, we ought to spend it for urban rapid transit, and maybe we ought to take this money and spend it for getting people over the highways, instead of compensating them.

So we have already had a foretaste of how specialized funding operates.

I may say, parenthetically, I think specialized funding is superior in this case. But there is the philosophical question it seems to me of whether or not we are funding a general social purpose on a specialized narrow base.

Let me extend that one step further, and I will not go much further because I am going to seek the opportunity to talk to you further one of these days, when we don't have to pay the reporter over here.

What about the economic disincentive of the tort system which you have thoroughly and effectively destroyed, and I think you really did a good job. I am inclined to think you have convinced me that the insurance industry unwittingly has distorted the tort system to the point where people don't care whether they are brought to court. They only care whether their insurance gets canceled. Then insurability becomes a disincentive. What happens if we remove that disincentive and provide no-fault insurance for everybody on any basis? What sup-

plies the disincentive then? Is it socially acceptable to say there need be no disincentive, or is it possible we can modify that dilemma by saying the contract for public indemnity will extend only to the direct consequences and not extend to punitive damages, for instance? What about a provision that you insure against punitive damages?

What if a man had to stand for damages on the punitive side for his actions and couldn't get insurance? Would that supply the economic disincentive?

Mr. RODDIS. Well, it is a very good point. I guess I have two comments on it, taking perhaps the tail one first. That highlights what I think is the question of the molding of driver behavior, the creation of deterrents from socially undesirable conduct.

It seems to me that is not something that should be the province of the civil law and insurance companies anyway. That is something that should be done through the criminal law. Unfortunately I think the criminal law has been led to do a poor job of it, partly because everybody sort of relied upon the civil law insurance mechanisms to do it. That is comment one.

Senator BAKER. If I can interrupt, I agree with you. I think it was probably man's first error in the tort field in that he burdened the tort concept with a social purpose, that is, punitive damages, which was a social purpose, not an indemnity purpose. But we are long past that now.

So what I am saying is let's look at the other fellow's mistakes way back and see if as we modify this system we can't improve on the system that exists.

Senator COOK. Before you all go any further on this, you will admit this distortion occurred because of the field of insurability.

Senator BAKER. Not originally. It occurred in England in the 11th century, when there wasn't any insurance.

Senator COOK. This is the point I have tried to raise with him though. We have made the tort liability and the punitive damages secondary to the degree of insurability.

Senator BAKER. Insurability is the disincentive to negligence.

Senator COOK. To follow through, and I don't mean to interrupt, I think the best example of what you are talking about, this incentive to rely on a program other than the field of insurability, is paramount in the Michigan program. Secretary Austin testified that last year 83,000 motorists applied to the assigned risk pool for coverage, while 260,000 motorists elected to pay into the fund.

We see people who say, when I get my license, I will pay my \$35, because there is no way any major judgment can be collected against me anyway.

Senator BAKER. I want to thank Senator Cook for that, and Mr. Chairman, I want to apologize for taking so much time. It is 20 minutes to 1.

Senator HART. No, we all feel we are extremely fortunate to have the professor here, and incidentally it is a great burden in terms of demand of your time in coming back and forth to Washington.

So far as I am concerned, while we have the dean, let's get that free counsel.

Mr. RODDIS. Could I remark on this other aspect of this problem which you both have highlighted?

In this perhaps I go a little further than Senator Cook. I don't think that the fault concept has much impact on driver behavior under the present system, even assuming there are some consequences to being at fault, if nothing else, you may either lose your insurance or have your rates raised, or even if you in fact bore some part of the liability; for example, I have known people who made serious proposals for deductibles on liability policies, with the statement that if the driver had some of his own dough riding on the front bumper, he might be more careful.

I wouldn't discredit the idea that that has some effect on people's conduct. But my own feeling is that fault liability or the exposure to fault liability, doesn't really have a significant impact on those personality characteristics or those factors of driver behavior that are really at the heart of accident problems. And I think that is suggested by two things.

First, there is one of the subsidies of the DOT study that explores this issue. It is by a sociologist named Dr. Klein, I believe.

And second, in a peculiar way, and it would take too much time to elaborate on this thesis, my theory is really illustrated by what actually goes on in sophisticated insurance ratemaking and underwriting today.

In other words, the fault system concentrates on a highly technical concept of fault. Somebody goes through a red light, or looks aside to straighten a child up while driving and has an accident, or has some other sort of immediately casual technical lapse. That is the reason why I often think a lot of these accidents are very much "there but for the grace of God go I" type situations, no matter how careful I think I am as a driver.

The evidence I think is that the things really at the heart of the serious accident problem are the kinds of causations that go back from these little lapses. They are personality traits, broader behavioral characteristics.

The suggestion would be if you are really going to have an impact on those, you have got to do it through techniques other than raising somebody's rate or canceling his insurance, or even exposing him to some financial liability.

I have always thought myself if a person's own sense of moral conscience doesn't lead him to drive with real regard for the rights and interests of other people, then I can't believe that this kind of contingent pocketbook effect has any big effect. After all, look at the randomness of the things. You can run all of the red lights you want so long as you don't wind up in a crash, as far as the fault liability system is concerned.

Senator BAKER. That is an eloquent argument in favor of the point that the system now is carrying a social component.

Mr. RODDIS. Yes, it is trying to.

Senator BAKER. And in this evaluation, it may be we ought to split out that social component entirely and put it over here in category 2, that is, the causal relationship, if any, between fault and compensation as a deterrent on future negligence.

What I am groping for still is fundamentals, and you have helped me immeasurably in trying to compartmentalize my thinking. What I am aiming toward, I think, without realizing it until now, is a way to preserve the responsiveness and utility of the tort system on a sound

and honest and equitable basis in terms of rate setting and response, to identify those areas where there is a social or moral obligation to respond, and then to decide whether or not we do it in a specialized way by manipulating rates and coverage with the insurance companies or do it in some other way that I haven't fully explored.

For my purposes at this moment, and reserving the right to change my mind, you have convinced me that there is no economic disincentive to negligence, there probably remains only the disincentive of coverage, as Senator Cook points out, whether or not you can get insurance at all, and that means whether or not you can drive a car in most States, and the question of whether we put the social and the legal components of the problem in one package or whether we split them out and deal with them separately.

I really can't go any further than that.

It is quarter to 1 and late and I have used up all my energy, so thank you very much.

Mr. RODDIS. Just to throw out a thought, and I am not a criminal law expert, but you may find food for thought in the public tort fine concept.

It is possible that one reason the criminal law mechanism doesn't work more aggressively is sort of a feeling that you really don't want to expose people to the stigma aspect of criminal treatment. But if you had some concept of a public tort fine, which was essentially payable to a public fund for some useful purpose, you might have a possible avenue.

I have never thought about it in those terms before, you just lead me to do so.

Senator BAKER. If you get that deep into the psychological implications, there is the postulation that one of the reasons we make people respond to damages under the tort system is because we project our own guilt on to them and we derive some benefit from seeing them suffer.

Thank you, Mr. Chairman.

Senator HART. We thank you.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Dean Roddis, as to the point raised by Senator Baker in the assessment of a user tax or assessment to collect the insurance dollars compared to a general treasury approach, the Department of Transportation study suggests that an internalization of the cost through a user tax approach would have a very beneficial effect upon the accident environment by causing direction or attention to be paid to the automobile with respect to its injury severity, and to its property loss reduction characteristics.

Do you agree with the thrust of the Department of Transportation study which suggests that by internalizing the costs—be they for wage replacements or for medical costs, or property damage coverage—you would have a salutary effect on the vehicle population and the accident loss circumstances?

Mr. RODDIS. On principle, yes. Really the only place the question comes up is on this question of whether you make the auto insurance mechanism primary or secondary with reference to the fringe benefit structures both governmental and private.

The only substantial arguments in favor of not fully internalizing would be, one, some of the fringe benefit structures are in a sense more efficient mechanisms now.

I think the New York report adopted a theory of deference to the more efficient system.

And the second point is almost political. You can have quite an effect on the auto insurance premium rate by the decision you make as to the extent to which you internalize. And that certainly is a pressure that shows up certainly in a lot of the State hearings on this question, the need to keep the projected rate levels down. And that has led to the idea of at least deferring to the fringe benefit structure on that question. But in principle I fully agree with the statement you made.

I think that it is wise to internalize the cost to the greatest extent possible to the automobile enterprise itself.

Mr. SUTCLIFFE. And your only caution was that in those areas where an insurance mechanism is already in existence, that may be more efficient, such as—

Mr. RODDIS. Well, it is basically in the medical insurance class, both private fringe benefit and governmental.

Mr. SUTCLIFFE. So you would agree with S. 945 which requires those provisions in an auto policy to be treated as secondary to any other coverages, unless expressly made secondary.

Mr. RODDIS. Yes; you make that choice, yes. You do not fully internalize, in other words, in theory.

Mr. SUTCLIFFE. Let me return to your suggestion for handling a problem that has occupied considerable discussion in these hearings. This relates to the treatment of intangible losses, or general damages, or pain and suffering, whatever label you choose to use.

You have advocated meeting that social problem or community conscience problem of the severe accident, the surgeon who loses a hand, and so on, by increasing, first of all, the first-party coverages to 48 months and a maximum of \$1,500 a month income replacement, coverage of all medical and rehabilitation costs.

What do you do in terms of compensation for the individual who suffers losses beyond that and suffers something such as permanent disfigurement? In other words—

Mr. RODDIS. My proposal left that under the catastrophic harm cause or action.

Mr. SUTCLIFFE. Now you suggested then that the tort mechanism should be preserved above that line for certain general damages or pain and suffering. How do you draw that line above the first-party coverages? And if you draw that line, do you do it on a fault basis; or do you do it on a no-fault basis?

Mr. RODDIS. Well, it is a good question. Let me compare what I think the present bill does with what I thought I was suggesting should be done. Maybe I am wrong on both, I don't know.

Mr. SUTCLIFFE. We would certainly appreciate that.

Mr. RODDIS. It might take a moment.

As I understand your concept of catastrophic harm, you define it as including either temporary or permanent, partial or total disability, with some kind of a concept of 70-percent disability, or disfigurement. Then you have a section that says that in the case of catastrophic harm, you retain the tort action based, as I understand it, on fault, if that is what the State law is, for all damages that would otherwise be recoverable, including economic loss.

Now that would mean——

Mr. SUTCLIFFE. This was including economic loss above what had been paid for on the first-party basis.

Mr. RODDIS. Right; that is just an offset, though. What that means is that suppose I have a high demonstrable earning level, far in excess of the level of insurance carried. If I incur the kind of injury that fits your catastrophic harm definition, then I have a tort action, with admittedly the offset, for my full income loss, whereas somebody who, say, has a lower level of loss, or doesn't fit the catastrophic harm definition, is limited to the prescribed benefit.

I don't see the need for that unless you are trying to get around another problem that is built into the bill, and that is that you didn't think it was possible, apparently, to cope with the concept of earnings loss except as a function of provable earnings.

Now I recognize there are some problems when you start talking about projecting future earnings. But still it is not an impossible task. What I would do is reverse out of both problems in a sense and more closely integrate the direct benefit and the catastrophic harm retained tort liability concept. In effect, what I would do is raise the level of direct benefits, and make them apply to expectable income loss also, subject however to some limitations, and then redefine catastrophic harm. I wouldn't fool around with the 70-percent business or the permanent business. The whole concept of what constitutes permanent and total or partial disability is one of the nightmares of disability insurance litigation.

I would basically define catastrophic harm as the disfigurement cases, if you are really committed to the principle that you have to recognize the right to recover some extra for those, and then I would define all of this concept of permanent disability as simply anything that goes beyond the 48 months. In other words, I wouldn't give a right of action for additional income loss within the 48-month period.

Mr. SUTCLIFFE. What mechanism would you create to prevent malingering to reach that 48-month level, or would you limit the tort action to only continuing wage replacement and medical rehabilitation costs?

Mr. RODDIS. As far as malingering is concerned, I would have the same provision you do, which is what amounts to a coinsurance factor. In fact I would go further, because the bill seems to me it could discourage rehabilitation by limiting the lost earnings factor to earnings lost by disablement from the present or substantially the same occupation.

I think that is sound in itself, but I suggest a further little gimmick that would amend section 2(12)(a), to add a provision reducing net economic loss by an amount equal to only 80 percent of earnings from any substitute occupation. In other words, I wouldn't put a premium on the injured person not accepting rehabilitation that would gear him for some occupation that might be substantially different from what he had done before.

Mr. SUTCLIFFE. What would you do with the housewife as far as compensating her?

Mr. RODDIS. You handled that properly now in another subsection. That is the substitute economic loss problem. That is another problem.

Mr. SUTCLIFFE. You think that is handled satisfactorily in the bill?

Mr. RODDIS. Yes; that is the proper way to handle that. Value the substitute services.

Mr. SUTCLIFFE. Let me pose this question: What is the rationale of utilizing the concept of fault to compensate those people who are disfigured or whose losses exceed that covered under a mandatory first-party coverage?

Mr. RODDIS. Perceived public pressure, I suppose. I told you earlier I am more of a purist.

Mr. SUTCLIFFE. But if there is the perceived public pressure, would that pressure be satisfied on a first-party basis as well as a fault basis?

Mr. RODDIS. You could, and I have made that suggestion from time to time, but it gets artificial. About all you can do is go to a schedule of stated benefits concept; you know, so much for the loss of a finger, so much for a scar on the face. You see what you are facing is the very significant but in a sense emotional argument, usually posed by some horrible hypothetical that can be devised about the beautiful, young woman who is unmarried and gravely scarred in a terrible accident by a reckless, drunken driver. And so her whole life, her psyche for life is impaired and so on. And there is a need for her to be compensated fully and for this offender to be exposed fully to the liability.

Now that is an extreme illustration, you can have others. I think that that is a kind of emotional, maybe others call it better a value judgment, that apparently many people feel very strongly about. And I suppose that you need to provide a remedy in order to accommodate that pressure for retention of the fault liability concept.

Mr. SUTCLIFFE. What if that judgment were placed on a first-party optional coverage basis at the time a person chose the insurance? In other words, not put it on a fault basis, but allow the policyholders for this general damages to undertake some relationship with their insurance company that would compensate them for that particular loss.

Mr. RODDIS. It is a very good thought. It is possible.

Mr. SUTCLIFFE. Thank you very much, dean, for the comments.

Senator HART. Dean, all of us have told you how helpful you have been, and we are very grateful.

Mr. RODDIS. Thank you very much, Senator, I appreciate the opportunity and I enjoyed the discussion very much.

Senator HART. Normally, of course, we would take a recess here for lunch but because of a meeting to which I must go at about 2:30, I would hope we could continue for a period until that time and then we would recess if we haven't concluded to return later in the afternoon. Let me suggest a recess of just 5 minutes.

(Recess.)

Senator HART. The committee will be in order. Next we are fortunate to have as our witness, the president of the Royal-Globe Insurance Cos., Mr. Clay Johnson.

**STATEMENT OF H. CLAY JOHNSON, PRESIDENT, ROYAL-GLOBE  
INSURANCE COS.; ACCOMPANIED BY BILL WALTON**

Mr. JOHNSON. Thank you, Mr. Chairman.

Senator HART. I should add that Mr. Bill Walton is sitting with you, and we would be glad to have comments of course from Mr. Walton.

**Mr. JOHNSON.** I appreciated the opportunity of testifying before this committee, Mr. Chairman.

My name is H. Clay Johnson. I am president of Royal-Globe Insurance Cos., whose headquarters are in New York City. Royal-Globe is a group of 13 stock companies actively writing property and liability insurance in the United States for almost 120 years and automobile insurance for more than 60 years. These companies are licensed and doing business in the 50 States and the District of Columbia with a 1970 premium volume of \$515 million of which automobile insurance comprises \$180 million.

In 1968 I appeared before the Consumer Subcommittee of the Senate Commerce Committee on Senate Joint Resolution 129, authorizing a study of the existing compensation system for motor vehicle accident losses. At that time, our companies endorsed the Department of Transportation study as being necessary not only to clear up the misconceptions that existed concerning the function of automobile insurance but also hopefully to suggest some useful alternative to the present system.

It was heartening to read Secretary Volpe's recent testimony before the House Committee in which he said it was unfortunate that insurers have failed to convey to the public and to their legislative representatives that the auto insurance institution inherited a faulty public policy—one that has vainly attempted the impossible task of molding tort liability and indemnity insurance into a workable and efficient reparations system.

**Senator HARR.** Mr. Johnson, let me interrupt you there, and I suppose I will be charged with having waited until you have reached a thin audience period to make this observation, but it is certainly appropriate. You make the point as did the dean before you that what we are wrestling with here is the system. It is not somebody with a black hat that got the wires crossed. It is an evolutionary process, which as with all human institutions didn't evolve very perfectly.

And we are now trying to see how we can improve it. In the nature of congressional hearings, the impression is inescapable that there must be somebody who is bad. Simply stating that that is not necessarily so is not going to relieve the sting. I know. But I feel obliged to put on the record that this isn't the problem; it is an accumulation of decades of unwise development.

**Mr. JOHNSON.** Thank you, Senator, we appreciate that. We know that we are generally misunderstood by the public. We are a beleaguered business, particularly just now.

You yourself have mentioned the identity crisis that everybody seems to be suffering from. I am the first to confess that our business is suffering from an identity crisis and what I was saying in quoting Secretary Volpe in part is merely trying to recognize, as he put it, that most of the current auto insurance spring from defeats in the tort reparations system rather than defects in the insurance institutions themselves.

But I don't hold the insurance companies in the present situation. For many years we remained aloof from the reparations problem on the theory that the legislators and the courts shape the legal destiny and we merely deal with the consequences. Lately, however, our business has come to realize that since we possess a certain expertise in

this area we have a responsibility to try to rectify the shortcomings of the present reparations system. I might say the same should apply to the legal profession. While individual lawyers are not responsible for what the law is—any more than a meteorologist is responsible for the weather—the members of any profession have an obligation to contribute to the solution of social problems falling within their sphere of activity.

Because I recognize such responsibility for our business, I am pleased to testify before your committee. In doing so I am stating the sincere views of myself and my companies and not those of any trade association since we belong to none.

Nor do we, in the words of Secretary Volpe, assume the role of advocates for whatever cause seems best suited to enhance or preserve our market position since we are not one of the largest writers of automobile insurance. We are merely writers of general property and liability business, which consists in substantial part of automobile insurance, and as such we recognize the inadequacies of the present reparations system and wish to see it changed to one which will better serve the public interest.

It would answer no useful purpose for me to deal at length with the deficiencies of the present fault system. In general, we agree with Secretary Volpe and others that the basic problems of the present system lie in the underpayment for those seriously injured or killed, the overpayment to the minimally injured and the wasteful administrative costs of the system. We also share his confidence that by changing the reparations system to first-party no-fault insurance, the major problems will be eliminated since they are primarily due to the cost and difficulties involved in adversary proceedings which will be largely dispensed with. We agree also that many other advantages will flow from a no-fault system, included among which are the following:

- Greater accuracy in rating first-party insureds because of their knowable characteristics as distinguished from the unknowable characteristics of third-party plaintiffs;

- Greater rate recognition of the protective qualities of the insured's own motor vehicle;

- Potential rate savings for low-income insureds because of recognition of their lower loss exposure as compared with high-income insureds, correlating rates more nearly with ability to pay;

- Added economic stimulus for enforcement of traffic safety laws;

- Reduction of market problems involving unavailability of insurance and policy cancellation and nonrenewal;

- Elimination of spurious claims by making each first-party claimant submit proof of economic loss;

- Reduction of inequities flowing from the contributory negligence rule as well as the vagaries of jury verdicts; and

- Reduction of the number of cases requiring legal representation and contingent fee arrangements with consequent savings in settlement time, litigation expense, and cost to taxpayers of the court system.

From an insurance company standpoint, the principal benefit of a no-fault system is elimination of the enormous cost of investigating, settling, and litigating third-party claims, the substantial savings expected to be realized in this area being the principal source of expected reductions in premium cost.

To achieve this, however, it is necessary that the no-fault system goes a considerable distance and not just a small part of the way as it does in Massachusetts. Any substantial retention of third-party liability or subrogation rights will, in our opinion, result in increased claims-handling costs and thereby retard the expected reduction in premium rates. However, we believe some statutory dollar limit on no-fault recovery is necessary in order to assist in the rating process by avoiding exposure to unlimited contractual claims for economic loss.

On balance, therefore, we would look with favor on the \$30,000 limit proposed in S. 945 since it would encompass the great majority of claims and thus obviate the necessity of incurring investigative and litigation expense but would still impose a limit and thus enable risks to be accurately rated.

In this same connection we recognize that where a dollar limit is imposed on no-fault recovery some provision must be made on a third-party basis for claims which exceed the limit as well as for meritorious claims for permanent injury and that this requires some definition of allowable third-party claims. However, we believe that catastrophic harm as that phrase is used in section 2(9) of Senate bill 945 is so ambiguous that it would be counterproductive and would require insurers to incur sizable and perhaps unnecessary investigative costs to prepare for the possibility of tort actions. We would suggest, therefore, that the definition of catastrophic harm be revised to include more precise standards.

Senator HART. If you could help us with that language, we would welcome suggestions.

Mr. JOHNSON. Thank you. I listened to the suggestions of Professor Roddis on this point, and while we would still like to study the cost aspects, I think I could say in principle I agree with most of his suggestions.

One other objection we have to S. 945 is that it would place automobile insurance in a secondary position to other collateral sources of recovery. We believe that under any no-fault system automobile insurance should be the primary source of indemnification for accident victims since such requires the motoring public to bear the costs of its own insurance.

This I believe was referred to earlier as internalization. If insurance coverage is made secondary to other collateral sources such as Blue Cross, medicare, medicaid, or social security, a large element of indirect subsidy would be created for automobile insurance and many of the expected benefits of a no-fault system would become obliterated. Moreover, the problem of rating no-fault automobile insurance would be immensely complicated if underwriters are required to consider the presence or absence of other collateral sources, and it would also remove a major source of expected savings.

Next, we would suggest that S. 945 be expanded to require property damage claims, other than those involving motor vehicles to be settled on a first-party basis by making the claimant an additional assured for this purpose. We also think there should be attached to that some limit, say \$1 million. This again would avoid the expense of investigation and litigation of property damage claims which might otherwise frustrate the main objective of no-fault to achieve premium reductions. Property damage claims involving motor vehicles should be prohibited on a third-party basis since car insurance will be compulsory and each

this area we have a responsibility to try to rectify the shortcomings of the present reparations system. I might say the same should apply to the legal profession. While individual lawyers are not responsible for what the law is—any more than a meteorologist is responsible for the weather—the members of any profession have an obligation to contribute to the solution of social problems falling within their sphere of activity.

Because I recognize such responsibility for our business, I am pleased to testify before your committee. In doing so I am stating the sincere views of myself and my companies and not those of any trade association since we belong to none.

Nor do we, in the words of Secretary Volpe, assume the role of advocates for whatever cause seems best suited to enhance or preserve our market position since we are not one of the largest writers of automobile insurance. We are merely writers of general property and liability business, which consists in substantial part of automobile insurance, and as such we recognize the inadequacies of the present reparations system and wish to see it changed to one which will better serve the public interest.

It would answer no useful purpose for me to deal at length with the deficiencies of the present fault system. In general, we agree with Secretary Volpe and others that the basic problems of the present system lie in the underpayment for those seriously injured or killed, the overpayment to the minimally injured and the wasteful administrative costs of the system. We also share his confidence that by changing the reparations system to first-party no-fault insurance, the major problems will be eliminated since they are primarily due to the cost and difficulties involved in adversary proceedings which will be largely dispensed with. We agree also that many other advantages will flow from a no-fault system, included among which are the following:

- Greater accuracy in rating first-party insureds because of their knowable characteristics as distinguished from the unknowable characteristics of third-party plaintiffs;

- Greater rate recognition of the protective qualities of the insured's own motor vehicle;

- Potential rate savings for low-income insureds because of recognition of their lower loss exposure as compared with high-income insureds, correlating rates more nearly with ability to pay;

- Added economic stimulus for enforcement of traffic safety laws;

- Reduction of market problems involving unavailability of insurance and policy cancellation and nonrenewal;

- Elimination of spurious claims by making each first-party claimant submit proof of economic loss;

- Reduction of inequities flowing from the contributory negligence rule as well as the vagaries of jury verdicts; and

- Reduction of the number of cases requiring legal representation and contingent fee arrangements with consequent savings in settlement time, litigation expense, and cost to taxpayers of the court system.

From an insurance company standpoint, the principal benefit of a no-fault system is elimination of the enormous cost of investigating, settling, and litigating third-party claims, the substantial savings expected to be realized in this area being the principal source of expected reductions in premium cost.

To achieve this, however, it is necessary that the no-fault system goes a considerable distance and not just a small part of the way as it does in Massachusetts. Any substantial retention of third-party liability or subrogation rights will, in our opinion, result in increased claims-handling costs and thereby retard the expected reduction in premium rates. However, we believe some statutory dollar limit on no-fault recovery is necessary in order to assist in the rating process by avoiding exposure to unlimited contractual claims for economic loss.

On balance, therefore, we would look with favor on the \$30,000 limit proposed in S. 945 since it would encompass the great majority of claims and thus obviate the necessity of incurring investigative and litigation expense but would still impose a limit and thus enable risks to be accurately rated.

In this same connection we recognize that where a dollar limit is imposed on no-fault recovery some provision must be made on a third-party basis for claims which exceed the limit as well as for meritorious claims for permanent injury and that this requires some definition of allowable third-party claims. However, we believe that catastrophic harm as that phrase is used in section 2(9) of Senate bill 945 is so ambiguous that it would be counterproductive and would require insurers to incur sizable and perhaps unnecessary investigative costs to prepare for the possibility of tort actions. We would suggest, therefore, that the definition of catastrophic harm be revised to include more precise standards.

Senator HART. If you could help us with that language, we would welcome suggestions.

Mr. JOHNSON. Thank you. I listened to the suggestions of Professor Roddis on this point, and while we would still like to study the cost aspects, I think I could say in principle I agree with most of his suggestions.

One other objection we have to S. 945 is that it would place automobile insurance in a secondary position to other collateral sources of recovery. We believe that under any no-fault system automobile insurance should be the primary source of indemnification for accident victims since such requires the motoring public to bear the costs of its own insurance.

This I believe was referred to earlier as internalization. If insurance coverage is made secondary to other collateral sources such as Blue Cross, medicare, medicaid, or social security, a large element of indirect subsidy would be created for automobile insurance and many of the expected benefits of a no-fault system would become obliterated. Moreover, the problem of rating no-fault automobile insurance would be immensely complicated if underwriters are required to consider the presence or absence of other collateral sources, and it would also remove a major source of expected savings.

Next, we would suggest that S. 945 be expanded to require property damage claims, other than those involving motor vehicles to be settled on a first-party basis by making the claimant an additional assured for this purpose. We also think there should be attached to that some limit, say \$1 million. This again would avoid the expense of investigation and litigation of property damage claims which might otherwise frustrate the main objective of no-fault to achieve premium reductions. Property damage claims involving motor vehicles should be prohibited on a third-party basis since car insurance will be compulsory and each

car owner will have the opportunity to purchase automobile physical damage insurance, with suitable deductibles, for his own protection.

Finally, while we have some reservations from a practical standpoint about the formula in S. 945 for the handling of claims involving commercial vehicles, we are uncertain of what to suggest in its place. Obviously, the desire is to avoid the extremes of imposing absolute liability which would seem too onerous, or equating the commercial with the personal car owner on a no-fault basis which would seem unduly favorable, or retaining tort liability which would frustrate the purpose of a no-fault scheme. While equitable sharing of cost is difficult to formulate we would seek a middle ground as S. 945 has attempted to do.

Secretary Volpe has mentioned the remarkable degree of consensus on a no-fault solution to the auto accident reparations problem and has said that immediate reform is demanded, the sole remaining issue being whether reform should take place at the State or Federal level. In his testimony he initially seemed to assume that reform at the Federal level would have to consist of actual Federal regulation of the automobile insurance business. We do not agree that such regulation by the Federal Government is either necessary or desirable for the purpose of achieving the intended result and we were glad to see that in the colloquy which followed his testimony before the House committee, the Secretary said that if a proposal for the imposition of minimum Federal standards could be worked out without a takeover by the Federal Government of insurance regulation from the States, he would not object.

Since automobile insurance is only one form of business written by property and liability companies it would in our view make no sense to have the Federal Government regulate automobile insurance alone and leave to the States the regulation of the remainder. The comprehensive system of State regulation now in existence which ranges all the way from the examinations for solvency to the approval of rates, rating practices, and policy forms, as well as the licensing of both carriers and producers, is one fabric and cannot be effectively split so as to apply to automobile insurance alone. Therefore, we favor the retention of State regulation of insurance generally, including the regulation of automobile insurance.

I might interpolate there, Mr. Chairman, that I am known in this business as one who does not look with disfavor upon Federal regulation. A few years ago I believe I was the first to say that I thought that was inevitable, and that we ought to prepare for it. So in saying this about retention of State regulation, it is merely a matter of proposing something that is orderly against something that we fear would be disorderly.

However, we also favor a mandate at the Federal level for the adoption by the several States of a no-fault reparations system since we feel desired uniformity and speed of action will be achieved in no other manner. In our view, if the States are allowed to exercise their own volition in adopting no-fault legislation, the job will never get done or, even worse, it will be done in a manner producing a crazy quilt of State laws which will only serve to compound present problems.

There seems little question concerning the power of the Congress to legislate the abolition of tort liability as applied to automobile insurance countrywide. The power of Congress over interstate commerce is plenary under the Constitution and if there were any lingering doubt about intrastate limitations that seems to have been removed by the recent U.S. Supreme Court decision in the *Perez* case dealing with the anti-loan-sharking provisions of the 1968 Consumer Protection Act. There the Court held that Congress can constitutionally find that a certain class of activities is inherently tied in with interstate commerce and it need not leave to the courts a determination that particular intrastate activities have a prohibited effect. Therefore, Congress could make a legitimate finding that automobile traffic is inherently tied in with interstate commerce and thereupon legislate the abolition of tort liability as applied thereto and the substitution of a new first-party no-fault system of automobile insurance reparations.

There is ample precedent for the plenary power of Congress being exercised in the interstate commerce field either directly by Federal regulation or indirectly by inducing State action. We would suggest that Congress permit State action but prescribe fixed standards for it. In other words, we believe Congress should adopt a model bill for State enactment which would limit tort liability as applied to automobile accidents and substitute therefor a first-party, no-fault system of insurance.

We also believe each State should be allowed 3 years—there's no magic about that, it could be shorter—3 years in which to act, failing which the Federal law would become effective in that State (the latter could overcome any State constitutional obstacle which may exist). Additionally, Congress might induce earlier State action by use of its control of highway funds. Our suggestion would, of course, preserve to the several States the actual regulation of the new automobile insurance system.

In our view the plea that States should be allowed time and opportunity for experimentation in the field of automobile accident reparations completely ignores the urgency of the present situation which, as mentioned above, Secretary Volpe himself has said demands immediate reform. Furthermore, we think it is equally unwise to suggest a pattern of diverse State legislation which would subject an insured motorist to varying degrees of reparations treatment depending on the State in which the accident occurred.

If there is anything which cries out for uniformity countrywide, certainly it is the subject of auto accident reparations, not only to assure an uncomplicated national solution to existing problems but also to simplify the coverage of motorists who customarily drive their automobiles from State to State. Since no-fault coverage is intended to be contractual in nature and not dependent upon the law of the State where the accident occurs, it is important to have all State laws uniformly conducive to that objective in order to maximize its benefits.

As in many situations, it seems that the difficulty most people have about a forced solution to the automobile reparations problem is to find a proper rationale for it. I suggest that this rationale springs readily from the concept that in this day and age the automobile is not just a piece of private property but an essential means of trans-

portation upon which our social and economic structure is vitally dependent. One only has to drive through the countryside and see factories, laboratories, and other places of business surrounded by huge parking lots full of employee-owned cars to realize how essential automobile transportation is to our economy and why it is foolish to consider any longer that it is some form of luxury. Thus, when one uses his car for essential transportation to and from work or in other ways which bear upon his daily existence, he is little different from one who elects to use a common carrier as a means of transportation.

For many years the courts have recognized the essentiality of the latter and have allowed passenger accident victims of common carriers to recover under a doctrine of strict liability. I suggest that a no-fault reparations system for automobile accident victims closely follows the same reasoning since it results in recovery of the victim's economic loss under all circumstances and restores him to a self-sustaining economic position.

What is thought to be socially desirable in one case should be equally so in the other. The workmen's compensation laws which were enacted in the several States many years ago adopted such a view in substituting first-party, no-fault recovery by the employee under an insurance scheme for third-party liability recovery against the employer. It is time that our society adopted such a view of automobile transportation.

I say all of this with complete recognition that insurance is an essential public service and that its only justification is its usefulness to the public. The legal profession is also engaged in a public service and its usefulness is likewise gaged by how it devotes its talents and energies to the public's good. It behooves both our insurance industry and the legal profession to work together to improve their services to the public. I think this can best be accomplished by having the Congress legislate in the manner I have described.

Mr. Chairman, I have some supplemental remarks about the other legislation that is before your committee. I can give that later and pause now for any questions concerning S. 945, or I can proceed, as you wish.

Senator HART. All right. When I say I appreciate having your testimony, it would be expected of me to say that, in general, it conforms with what I think we should do. But speaking from the background of the insurance business as you have, I hope you will be very persuasive with Congress to see if we can move promptly to make the corrections in the system which you put your finger on.

I would underscore only one point, and that is the fact that as you said:

Secretary Volpe has mentioned the remarkable degree of consensus on the no-fault solution to the auto accident reparations problem and has said that immediate reform is demanded, the sole remaining issue being whether reform should take place at the state or federal level.

Until the very recent past, you could hardly get away with saying that there was that consensus. But I think now we should recognize that there is.

Mr. JOHNSON. I wanted to identify with the group insurance concept as well, because I assume you are interested in the insurance companies' point of view on that.

Senator HART. We are.

Mr. JOHNSON. We are not opposed—meaning myself and my companies—in principle to S. 946, which has for its principal purpose the elimination of State prohibitions and obstacles preventing the writing of group automobile insurance since we favor maximum flexibility in the marketing and pricing of insurance. Our companies have, in fact, been in the vanguard as to “mass merchandising” of personal lines insurance and we would prefer to be free to adopt new rating techniques in this area.

However, I would not wish to leave with this committee the impression that artificial statutory and regulatory restraints at the State level are the only impediment to the writing of true group auto coverage. The essential ingredients for true group coverage are the homogeneity of the group and the statistical credibility of the group experience. Because automobile rates customarily take into consideration the experience differentials applied to geographical areas as well as the age, driving habits and other characteristics of the named insured, it has been found difficult to develop a true group approach to the writing of automobile insurance even in those States where presently permitted.

It is to be expected, however, that given the opportunity, the insurance business would experiment with various new techniques in this direction and would in all probability develop modified group plans permitting the use of average rates while at the same time taking into consideration geographical areas and individual risk characteristics.

Since my statement with respect to no-fault automobile insurance advocated Federal legislation for the purpose of achieving uniformity of approach by the several State, I cannot consistently deny support for Federal legislation which would achieve a desirable degree of uniformity in the field of group automobile coverage as well.

On S. 976, I merely wanted to say that this is a bill to amend the existing National Traffic and Motor Vehicle Safety Act and we as insurance companies are not directly involved in this since it pertains only to safety standards applying to the manufacture of motor vehicles. Insurance companies are affected only to the extent that the Department of Transportation is required to make information with respect to the testing of the damageability of cars available to them for use in determining premium rates for automobile insurance; and, of course, the related provision requiring a report to the President and Congress on the extent to which our industry is utilizing such information in the determination of insurance rates also implies some monitoring of our performance in this respect.

Since there is in the bill no direct regulation of the insurance business this question is not presented. Our companies, are, of course, deeply interested in the subject of damageability of automobiles and consequential injuries to the occupants thereof. Some years ago, we, along with other automobile carriers of all types, founded the Insurance Institute for Highway Safety now headed by Dr. Haddon and, as your committee knows, the institute has lately been conducting very pervasive studies in this field which have evoked wide public comment, particularly its film showing the actual damage incurred by various makes and models of cars at low speeds.

In fact, our companies were a cosponsor of a symposium on this subject held by the Institute last year. Quite naturally therefore, we would welcome any impetus which the Federal Government can give toward the reduction of the damageability of automobiles and injuries to their occupants. Moreover, we would welcome the availability of information which would assist us in reflecting in our rates the known degrees of damageability, et cetera.

I am sure, however, that this committee appreciates the difficulty of any firm projections of rate reductions which might be made possible by use of such information. This difficulty stems not only from the fact that damage to cars and their occupants occurs at varying speeds, only the lower of which are susceptible of measurement, but also from the fact that the frequency and severity of car accidents is attributable to many other factors not the least of which are the enactment and enforcement of traffic safety laws, driver licensing, individual driving habits and highway construction.

Nevertheless I am certain that if scientific information of the type contemplated by S. 976 is made available to our industry, it will be put to good use in our rating techniques.

Just in conclusion, Mr. Chairman, I want again to thank the committee for the opportunity to appear. I want to express our gratitude for the committee's interest in the subject of automobile insurance. Your sponsorship of the National Traffic and Motor Vehicle Safety Act in 1966 and the subsequent authorization of the 2-year study by the Department of Transportation of the no-fault insurance subject has been most welcome as far as my companies are concerned. We feel that only in this manner has needed public attention been given to an area which has been perplexing our industry all through the sixties.

Your committee knows of the billions of dollars of loss we have incurred trying to keep pace with the toll of highway accidents which was made worse by the constant impact of inflation. We agree with you, Senator Hart, as to our—what I mentioned earlier—identity crisis. We find ourselves issuing a policy to cover potential tort liability, but the public looks upon it as a source of compensation only. Your committee has put the spotlight on this dilemma and we are grateful for that.

And we sincerely hope that these hearings will culminate in useful legislation along the line I have described. Thank you.

Senator HART. Thank you.

I repeat, your testimony with respect to the several bills is most welcome. And I think the role that you and others in the insurance field have played in funding that insurance institute to which you referred, the Insurance Institute for Highway Safety, has been an important contributor toward lifting the sights for everybody.

I have seen those films and I understand they are being shown just as widely as the distributors can persuade the exhibitors to get them in line. Although I would doubt you would win any Emmies in Detroit for the film, in the long run everybody will be the better for it Mr. Sutcliffe.

Mr. SUTCLIFFE. Thank you, Senator Hart.

Mr. Johnson, so that we can understand your proposal for a Federal model bill better, by a model bill, do you mean one that sets down certain requirements, for example, one that sets down requirements as those in S. 945?

Mr. JOHNSON. And that, as to those requirements, does not permit variation by the State legislatures. That is what I mean, an exact pattern for State enactment.

Mr. SUTCLIFFE. Then as to the point Senator Cook has discussed about allowing the States to go beyond in requiring mandatory coverages, you would suggest that the bill allow—the model bill and the legislation passed establishing the model bill allow this kind of activity?

Mr. JOHNSON. No, I was suggesting the opposite, as a matter of fact. I think that the mandate at the Federal level and the compliance there with it at the State level should be identical. I don't think that the States should be in the position to enact anything less or anything more—the reason being that if that were possible, you would develop this thing I abhor—a diverse system which becomes a hodgepodge countrywide and makes it almost impossible for administration by the insurance companies. Naturally I am thinking of our job of trying to rate a driver who is likely to drive his car any moment into another State where the law and exposure could be different. And I just think that one way to avoid this and to provide a common denominator for coverage is by having a federal pattern that must be adhered to.

Mr. SUTCLIFFE. You argue for motor vehicle property damage liability to be abolished in favor of the option on the policyholder to insure or not insure his car against collision?

Mr. JOHNSON. Yes.

Mr. SUTCLIFFE. And you would have that made a part of the model bill?

Mr. JOHNSON. Yes. I think you have to legislatively rule out tort liability as regards property damage in order to permit the companies not to be concerned about that exposure when they issue a policy. As you probably know, the property damage claims have been tied very directly to bodily injury claims—not only because they arise out of the same accident, but because in very many cases the bodily injury claim is merely a means of trying to induce a more generous settlement on the property damage claim. So you can't divorce these two, in our judgment. You have to look at them together. If property damage claims were left under the tort liability system, we think that a lot of the savings and advantages sought to be achieved by no-fault insurance will be lost.

Therefore, we think that vehicular property damage claims should be rid of any tort liability, the same as the bodily injury claim. That leaves us only with the nonvehicular property damage claims—how to deal with those?

Obviously if you rule out tort liability on that, then you are in a position where you are dealing not with your own insured as to something he owns, but you are dealing with a third party as to some property that has been damaged, and that isn't manageable in the same way. You can't say, well, let's let him insure that, because your opportunity to provide coverage for him doesn't arise in the same manner. So we think there should be some preserved area of tort liability recovery there.

Mr. SUTCLIFFE. What about general damages or pain and suffering in certain specified cases? Can you insure that on a first-party basis?

Mr. JOHNSON. Well, we do in effect with medical payments coverage under the present automobile insurance.

Mr. SUTCLIFFE. I am talking about the intangible loss, the general damages, pain and suffering, what a jury awards on the basis of community conscience to an individual for severe harm to help make him feel whole or feel compensated for that loss.

Mr. JOHNSON. My testimony recognized that there should be an area of recovery, tort liability recovery, over and above the rather high threshold provided, which I approve of, in your bill, so as to permit recovery first for permanent and total disability, where the economic loss exceeded that amount, and second, for dignitary damages, shall we say, where the nature of the injury was such as to deserve compensation in a manner that cannot be recognized under the economic loss test.

Now, just how that should be defined, as I said, is extremely difficult. I do not think it is enough to just call it catastrophic harm, and we would like to see a more precise definition of that.

I heard the colloquy this morning, in reference to Professor Roddis, and all I would say is that in the hypothetical case of the young lady who was disfigured, she is not compensated now unless she is lucky enough to be run into by an owner who has high limits coverage. I do not say that is right; I am just saying it is a fact.

This is an imperfect world, and if we are merely trying to create a better system than the present one, then you have got to measure it in terms of the present system. You cannot measure it in terms of the ideal. I suppose the ideal is that everybody would recover what was due him under every conceivable type of situation. But then you look at the present law and say, what is now recovered? Well, sometimes recovery is made in that type of disfigurement case for dignitary damages which go to a very high figure, but from a practical standpoint only where there is insurance. And certainly if this indigent drunken driver mentioned this morning runs into this lovely lady, she is not going to recover anything but the basic limits.

Mr. SUTCLIFFE. So, in other words, we are assigning those damages not on the basis of the fact of the person who caused the damage, but on the basis of his economic stature or liability coverage?

Mr. JOHNSON. We are now, yes. It is not intended to work that way, but it does.

Mr. SUTCLIFFE. That is a very cogent point.

Mr. JOHNSON. It is not intended that way, but this is the realistic picture.

Mr. SUTCLIFFE. Let me ask why, if you are proposing a model bill be enacted by Congress that permits no deviation, that you suggest a 3-year time delay for the States to enact that model? Is it for very practical reasons in the insurance industry? Is it for the purpose of allowing the States to be involved in the process? What is the rationale for the 3-year delay in enacting the model bill?

Mr. JOHNSON. I think it is a combination of all of those. I said there was nothing magic about the 3 years, and I would prefer to see a shorter time. First, let me say the only reason I suggest an opportunity for States to enact this legislation rather than have it done by Federal fiat is merely out of recognition of what seems to be popular today in Washington, and that is the concept of dual federalism. There seems to be in both parties a desire to let legislation be as close to the people as possible, as has been said, and to recognize States' rights whenever

possible and to enable States to administer programs to the extent that is possible.

Now, my proposal is merely out of recognition of that, among other things. Also out of recognition of the fact that the States are not strangers to this field; they have been in this field of regulating automobile insurance for many years, and it just seems appropriate to let them stay in the act so to speak to the extent that is possible, even though you force the type of action they can take.

Thirdly, the idea of the time element was to enable those States which are more advanced in their thinking on this to go ahead and get the thing started without waiting for the Federal law to take effect. Where would that be? Well, it might be New York, for example, where the insurance department and the governor have endorsed no-fault legislation—and there is a Republican legislature there, and whether it will be done this year or not I do not know, but at least the circumstances are more conducive there than in another State. If New York wanted to go ahead, I would think that would be better than having the effectiveness of a Federal law held back for the requisite period for people to get ready.

Also Massachusetts, which already has a modified no-fault law, might see fit to broaden theirs and go into a deeper area. And there are other States I could mention as well where the no-fault concept seems to have pretty well taken hold.

I think that this piecemeal approach is all right as long as it conformed to a uniform pattern and is not hodgepodge, as I say; I see nothing wrong with the progressive achievement of that objective. From our industry's standpoint I see some advantage too—although this I put in a secondary position—some advantage in acquiring some progressive experience. But I realize when I say that I am a little inconsistent, because I have already said that I think we ought to have nationwide uniformity, and if you asked me which I would rather have, the progressive experience or nationwide instant uniformity, I would have to say the latter.

Mr. SUTCLIFFE. But your comments go to training of people?

Mr. JOHNSON. Yes.

Mr. SUTCLIFFE. Training techniques?

Mr. JOHNSON. We have a vast array of people—our companies and other large writers of automobile insurance—in our claims department who mainly are engaged in the investigation and settlement of tort liability automobile claims. If those forces are going to be re-deployed to a different type of work, naturally I think it might be helpful to have an interim period in which to arrange that. Mind you, I think it could be done, I am not making it an insurmountable obstacle.

Also we have the rating techniques. This is a new ballgame. If we get to no-fault the rating of risks is on an entirely different basis than ever before. And there will be an absence of statistics as well. True, we have statistics now as to frequency and severity of car accidents, but we do not have those related to the first-party insured in the sense of his economic situation.

So obviously under a no-fault system you will be considering how much it is going to cost to put that insured together again if he gets into an accident, how much his medical expense will be, how much the loss of income is in his case. As it is now we are considering an un-

known third party whom we are going to put together in the event of an accident. Now we will be looking at the fellow we are insuring and we are going to have to rate him.

Mr. SUTCLIFFE. You mention it will be a new ballgame and one that will not have a statistical basis, but nonetheless it is one you think is worth playing.

Mr. JOHNSON. Yes, oh, yes, we are all for it. We just do not want to understate the difficulties of the transition, that is all.

Mr. SUTCLIFFE. As to the problem that Dean Roddis mentioned earlier this morning of mandatory writing of insurance policies on application, you argued for the retention of State regulation. Question one would be, would that include all aspects of rate regulation? Question two would be, if there is an affirmative answer to the first question, what is your position on mandatory writing? And if your position is affirmative as to mandatory writing, what do you do with the argument that Dean Roddis presents that this would increase the selectivity, the selective underwriting practices in the United States today?

Mr. JOHNSON. You are correct in saying that by recommending the continued state regulation of insurance I was impliedly saying that I did not favor this Federal regulation of insurance that is in S. 945 as regards the compulsory writing of insurance and the nationwide prescription of the type of policy and the breadth of coverage. You are right in inferring that I am in favor of the continuance in the several States of the present system of regulating rates and forms of coverage. By that I do not mean they should be frozen into any position, because our companies favor open rating and we have been strong advocates of opening rating.

So we would hope that all States eventually will get to no-prior-approval rating laws. But until they do we will be satisfied even to submit to prior approval rating laws in preference to a Federal system of regulation that is superimposed on top of present State regulation.

As I identified myself earlier, I have not been an opponent of Federal regulation of insurance as such. But I think our last position could be far worse than our first if we ever got under a dual system or regulation. I certainly do not want to see the insurance companies put in the position of the railroads in the United States, which is one of the things they have suffered from in my opinion. I would far rather be in a position of a national bank which is under the Comptroller of the Currency's regulation or an airline under the CAB. But to be under a dual system of regulation I think would be impossible. Particularly it would be impossible if the Federal Government, which is prescribing the mandatory coverage, is doing so without any control over rates and presumably without any real interest in the ability of the companies to write the mandatory coverage within the rate structure established in the various States.

I have always said that in this business of insurance you should have one extreme or the other: you should have the same rate fixed for all companies for a given coverage by a public authority, State or Federal, and let the companies compete as to their service and in other aspects; or companies should be able to compete ratewise as well as servicewise. But you cannot have it both ways—and in the first instance, if you have the rate established so it is the same for everybody, then there might be some justification for making coverage

mandatory, the same as is done with a public utility which has to render service.

But where you have a competitive business such as ours—and there is no business you can think of where competition is more rife than it is in insurance—with companies competing for mere survival, to be told that they have to write coverage for anyone and everyone without any choice and at a price which, let's face it, is not within their control in many States because of the political interferences with rate approvals, this creates an impossible situation because there is no escape valve.

And you cannot ignore capital incentive—after all, whatever one thinks about the private insurance business it is here, it is something that has existed for a long time. Behind the premiums there is a considerable amount of capital; it may not sound like much compared with the trillion dollar GNP we talk about today, but it is still a lot of money. And the capital will not stay there, the goose will be killed that lays that golden egg if the companies are not able to see their way clear to making a profit on the business they write.

Mr. STUTCLIFFE. Right now the Department of Transportation informs us that 15 to 20 percent of the drivers in this country are operating their vehicles without liability insurance coverage. One of the reasons for this is lack of availability, the economic inability to participate in either assigned risk programs covering liability or high risk companies covering liability and other insurance.

One, do you think the availability problem would be solved if we had mandatory no-fault? And two, hypothetically, if it is not solved, do you think there is a basic inconsistency with your desire to maintain State regulation and the creation of a Federal corporation, as suggested by Dean Roddis, for the providing of insurance coverages at a rate that people can afford for picking up that driver who cannot obtain insurance on the voluntary market?

Mr. JOHNSON. Taking the first question first, I do believe that a mandatory, nationwide, uniform limited no-fault system of the type I described, would cure the market problem for automobile insurance and would go a long way toward curing the problem of availability of insurance coverage. Now, I do not say this in a critical sense, but one of my troubles with S. 945 is that I think it displays little faith in the no-fault mechanism because it does not trust that to provide a cure for the marketability problem and the availability of insurance but it goes on to make it mandatory that coverage be made available and so on. I think if one really believes in no-fault as a near panacea for the problems of availability of insurance, cancellation, nonrenewals, and the like, then he ought to give it a test. But it is never going to be tested if it is done in an atmosphere where mandatory writing of coverage is in effect. You will never know whether no-fault is good or bad.

But answering your second question, if it should fail, then I concede that some remedy would have to be found, and on that remedy I do not disagree with Professor Roddis; I think our business is always in the position where if it does not provide coverage it cannot complain if the Federal Government steps in and fills that vacuum.

This is a position we have taken on crime insurance. We think crime insurance of the type that the Federal Government seems to

want written is not insurance at all; it is really a subsidy offered to merchants in an area where that type of insurance cannot really be written. And we say that if that subsidy is going to be provided it should be provided by the government, not by the insurance business, because it is not really insurance.

I would say that about automobile insurance. If it ever gets to the point where no-fault was given a good try and there was a hard core of drivers who could not get insurance because of the neighborhoods in which they lived and accident proneness or some other situation, if this became a social problem and coverage is still considered socially desirable in order to give them economic means of transportation, then I think certainly it should be done by the government.

I do not think we should complain then, but I think we ought to be given a chance first.

**Mr. SUTCLIFFE.** What about the provisions prohibiting cancellation or nonrenewal except in certain specified situations? Do you support that?

**Mr. JOHNSON.** We have supported—I mean most companies of every type have supported—the noncancellation statutes in the various States which in effect say that once a policy is written, after a certain period of time it cannot be canceled during the term. Nonrenewal up until now has not taken that extreme form—the most that is required is that the insured be given appropriate notice of intention not to renew. This is because, up until recently anyway, insurance companies have thought this to be an essential part of their underwriting prerogatives. It goes back to what I was saying earlier. If you consider insurance private enterprise, and if you consider it a competitive business, then you have got to concede the underwriting prerogative—the decision as to whether a company is going to continue a risk on its books.

**Mr. SUTCLIFFE.** Is it based on the inability of the rating structure to respond to eligibility for classification?

**Mr. JOHNSON.** That is right.

**Mr. SUTCLIFFE.** So because nonrenewal has not taken that course it is really a reflection of the present state insurance regulatory mechanism?

**Mr. JOHNSON.** Yes, but S. 945 does not cure that inability and it will never be cured short of some kind of a rate that is high enough to encompass all types of risks. And this I cannot see happening.

**Mr. SUTCLIFFE.** Thank you very much.

**Senator HART.** Is there anything you would like to add?

**Mr. WALTON.** No, thank you, Senator Hart.

**Senator HART.** Mr. Johnson, all of your testimony has been good. Several of your answers I think will help us better understand and better evaluate the proposal for no-fault we are considering. Particularly that answer which reminded us to test what in fact happens now before you reject the proposed no-fault because it too is not perfect. The question really that this committee should compel itself to answer is, will on balance this no-fault proposal improve existing situations? There is one answer you gave that states that much more effectively than I.

**Mr. JOHNSON.** Thank you, sir.

**Senator HART.** We will recess at this time and resume at 4 o'clock. (Recess.)

Senator HART. The committee will be in order.

As we resume, we will receive testimony from several people, but may I recognize first the president of the National Association of Independent Insurers, Mr. Vestal Lemmon.

Mr. Lemmon, if you will introduce those with you.

**STATEMENTS OF VESTAL LEMMON, PRESIDENT, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS; ACCOMPANIED BY ARTHUR C. MERTZ, VICE PRESIDENT AND GENERAL COUNSEL; AND DR. PATRICK MILLER, CORNELL AERONAUTICAL LABORATORY, BUFFALO, N.Y.**

Mr. LEMMON. Thank you, Mr. Chairman.

We would like to have as our first witness, Mr. Arthur C. Mertz, vice president and general counsel. He is going to testify primarily on S. 976.

Mr. MERTZ. Senator, we appreciate the opportunity of appearing here today, and we especially appreciate your graciousness in continuing the hearing to this late hour in order to hear us.

Senator HART. Thank you for being patient with us.

Mr. MERTZ. And we also admire your stamina for being able to last this long. I will abbreviate my statement somewhat.

Senator HART. It will be printed in the record in full.

Mr. MERTZ. Thank you, sir.

We are representing the National Association of Independent Insurers, a trade association of 533 companies of all types and sizes, stock and nonstock, which serve more than half of the insured motorists in America.

With me today is Dr. Patrick Miller, of Cornell Aeronautical Laboratory, Inc., who will talk about the status of research being conducted by that organization on our behalf which is pertinent to this legislation.

We appear today to give basic support to S. 976, subject only to certain qualifications and suggestions which I shall note in the course of my statement. We endorse this bill in its major features, in its broadening of DOT's authority to include promulgation of property loss reduction standards; establishment of tests and procedures to produce comparative damageability data on production models of new cars; the determination by DOT of feasibility of similar procedures relative to vehicle safety testing and data reporting; the broadening DOT standards for State vehicle registration laws to include title provisions; and establishment of further incentives for States to adopt and implement periodic vehicle inspection laws.

In regard to the matter of expansion of the vehicle inspection systems to cover certain postcrash situations, we support the underlying safety objectives, but urge further research and experimentation before determining whether this should become part of the mandatory standards, as I will point out.

Our general endorsement of S. 976 arises out of our profound concern over the rapid upsurge in auto material damage losses. S. 976 should help to make possible the stabilization or reduction of auto damage insurance rates.

NAII, as an advisory organization, is working to develop means of evaluating the impact that better bumpers and other design improvements will have on losses, so as to aid our companies in giving appropriate rate recognition to those improvements.

During the decade 1959 to 1969 the average auto property damage loss incurred by our companies increased about 100 percent. That is, the severity of property damage loss in the typical everyday automobile crash about doubled. Even more disturbing is the fact that the annual rate of increase in that average loss severity has been rapidly accelerating. It more than doubled in the past 5 years. That is the acceleration, the rate of severity doubled.

Although premium levels have been raised from time to time, the loss spiral has outstripped them. This is evidenced by the fact that the loss ratios, which is the ratio of incurred losses to premiums earned, these loss ratios have risen substantially during the same 10-year period.

Between 1959 and 1969 the average loss ratio on property damage coverage for all stock companies rose from 65.6 percent to 81.8 percent, up almost 25 percent.

On collision, the ratio went up from 60.2 percent to almost 76 percent. That was an increase of 26 percent.

Notwithstanding more than a 10-percent reduction in the expense ratio during the same time, their combined losses and expenses in 1969 produced an 11-percent underwriting loss on property damage and almost a 5-percent loss on collision coverage.

On mutuals, the trend was even worse, as I point out in my statement.

Translating this into dollars, these percentage underwriting loss figures for 1969, we find that stock and mutual companies combined lost over \$450 million on auto property damage and collision coverages. Adding in the results from fire, theft and comprehensive insurance, produced over a half billion dollars in aggregate losses on the auto material damage coverages. This compares with about a \$150 million loss on auto bodily injury liability coverage.

It is obvious which side of the picture now represents the major Achilles' heel of our business, costwise. While total earned premium volume for material damage in 1969 was only about 20 percent greater than the premium volume for bodily injury, those material damage premiums produced well over three times the amount of losses.

What are the cost ingredients in these staggering losses?

A year and a half ago, Senator, in testifying at the Senate Anti-trust and Monopoly Subcommittee's hearings on the auto repair problem, we identified four major factors.

One was speed, horsepower and high performance cars.

Another was increases in repair garage charges and overhead.

Thirdly, a spiral in prices for new cars and for crash repair parts.

And fourthly, the extreme vulnerability of today's automobiles to costly damage.

There has been some improvement in the first area, largely because of the leadership shown by one of our member companies late in 1969 in instituting surcharges on "muscle" cars, followed by the same action by other companies, the horsepower race of 2 years ago was aborted and we hope permanently.

Repair garage charges for labor have continued to rise, as evidenced by enclosure 1 to our statement, which shows the trend in some 13 cities, major cities in the United States.

In the decade 1960 to 1970, the average hourly rates in the 13 large cities increased about 90 percent. Here again 65 percent of that increase occurred in the latter half of the decade, and only 25 percent in the first half of the decade.

Next, as far as the cost of cars and replacement parts, in our 1969 testimony we showed that between 1965 and mid-1969 the new car list price on a Plymouth Fury increased 11 percent and that of a Chevrolet Impala and a Ford Galaxie, about 10 percent. Meanwhile, the list prices on the eight major component parts most commonly replaced in collision repairs rose between 20 percent and 36½ percent respectively, 2½ times as fast as the new car prices. This disparity between new car prices and crash parts prices, has special significance to our business, because about 85 percent of our property damage collision claim dollars go for repairing vehicles and only about 15 percent in payment of total losses, that is, where the car is totaled and is not repaired.

Enclosure 2 to this statement, Senator, consisting of three charts, brings these price trend figures forward from 1969 to 1971. And we have these charts attached to the statement.

You will observe that during the past year and a half the increase in list prices for these new cars and for the major crash components bear a much closer relationship to each other. In other words, new car prices and crash parts prices now are going up at about the same rate.

However, this is an improvement in consistency, but we now look at the picture and find that prices both for new cars and parts prices are increasing at an accelerating rate.

So we are getting it both ways now. Not only have the manufacturers' list prices for parts been climbing rapidly, but the effective prices for these parts at the repair shop level have been going up even faster, due to the decline of real price competition at the repair shop level in parts prices. This was due to the widespread disappearance of discounts at that level.

We pointed this out in our testimony before you, Senator, in late 1969. And the revelations, the data we presented then, plus the data subsequently presented by one of our companies, State Farm Mutual, we believe played an important part in bringing about the now pending Federal Trade Commission investigation into the whole crash parts distribution and pricing system. We have been cooperating in that investigation. We hope that it will lead to the opening up of effective competition and improved efficiency in that distribution system. Because we think there could be a great saving to the consuming public if that occurred.

Meanwhile, our staff has been maintaining a continued watchfulness over crash parts price trends. As I pointed out in my statement: our watchdog in this area has in one instance already brought about correction of errors in the published parts price manuals where the prices for certain bumpers were in error, overpriced, and our revelation of that brought the price down. We think a saving resulted from that.

Another avenue we are pursuing is a study of the feasibility of a crash repair research center. Recently we sent a four-man team to England and Sweden to examine the research facilities there. The favorable report they brought back has encouraged us to pursue this avenue further. We hope soon to complete a more detailed study of the practicability of such a center in this country. I personally believe there is in this facility, an opportunity for benefits not only to our business, but to auto manufacturers, repair shops, and the consumers as well.

The most critical area, costwise, and the one on which we have focused primary attention is auto design as it affects damageability. This is, of course, one of the prime subjects dealt with by S. 976.

In our 1969 testimony before your subcommittee, the Antitrust and Monopoly Subcommittee, we listed and analyzed many of the common design features that make modern-day cars unnecessarily vulnerable to damage and costly repair, and we at that time decried the utter lack of functional bumpers, and urged the manufacturers to equip cars with bumpers that would withstand everyday, low-speed traffic mishaps.

As you know, one of our companies subsequently widely advertised its offer to make a discount, offer a discount on cars equipped with bumpers that could withstand specified barrier crashes. Certain other companies have followed suit.

Your 1969 auto repair hearings, Senator, and the chain of events that followed, including the issuance of bumper standards, have certainly signaled a major turning point in the crusade for safer, saner cars. Damageability considerations and bumper technology have now been thrust to the forefront of attention by the auto manufacturers in their design planning. Indications are they are now mounting extensive research efforts to bumper technology and damage minimization, and we are encouraged by these efforts. Equally important, the issue has been forced to the forefront of public attention, which should give encouragement to the manufacturers and the Government that the public is ready for safer, more practical care design features.

The initial bumper performance levels set by DOT, particularly the bumper requirements, have fallen short of what had been anticipated and hoped for. One of the reasons cited by DOT for only requiring 2½-mile-an-hour barrier rear bumper capability on 1973 models is its conclusion that a 5-mile capability "would involve extensive structure redesign without a commensurate increase in safety."

Of course those bumper standards are expressly keyed to safety considerations, because the act of 1966 does not expressly empower DOT to give weight to vehicle damageability.

Your bill would close that gap in DOT's jurisdiction, and we support such a move.

I then point out on the balance of that page some of the reasons for that, and Dr. Miller will discuss some of these points when he testifies.

A subsidiary question presented by S. 976 is whether to spell out specific minimum bumper requirements in the statute itself, as your bill now does, or whether to leave such technical specifications to the DOT.

We believe the wiser approach is to avoid statutory specifications and give DOT the responsibility for such determinations. The choice of the best bumper involves interplay of a great number of factors. We believe an administrative agency should decide it.

We would suggest, therefore, that paragraph 125(c) on page 5 of the bill be deleted and that paragraph 125(b) be broadened to make it include bumper standards. But we suggest it should be spelled out that the Secretary not only should promulgate, but should periodically revise and update all such standards, which I am sure was implicit in your intent, but perhaps it would be wise to spell it out, to make it clear the overall objective is timely progressive improvements of design as expeditiously as is feasible in the light of minimum leadtime reasonably needed by the manufacturers to effectuate the change.

Section 5 of S. 976 provides that by July 1, 1972, DOT shall promulgate procedures under which all manufacturers must test production models of new vehicles, and also they should determine the feasibility of similar tests as to injury safety considerations. It also provides that the results of the tests must be reported to DOT and DOT is to make them available to the public and insurance companies and ultimately is to advise Congress on the extent to which our industry is utilizing such information.

We support these provisions. We respectfully, however, urge deletion of paragraph (b) (3) on pages 8 and 9 of the bill requiring automobile dealers to provide comparative insurance cost information to prospective car buyers.

The reasons for our suggesting that are set forth in my statement. I won't read them but will submit them for your consideration.

Subject to that one suggestion, we endorse section 127.

More than that, I want to emphasize that NAIH, as a qualified rate advisory organization, is preparing to be of aid in every way possible in enabling the companies to give appropriate recognition to cars with improved bumpers and other damage-reducing design changes, just as soon as they have credible data on which to base such action.

We have been studying ways and means for developing the kind of data the companies will need. If possible, a method should be found to rate the new car models at the time they enter the marketplace. And your bill, I note, envisions the same need.

When the cars come to the marketplace is the time that premium rate variations will have the greatest significance to the buying public. To this end, in 1970 we commissioned Cornell Aeronautical Laboratory to conduct research on our behalf into an area that has never been previously probed. The question is: Can the analytical engineering process or a combination of that process and a minimum amount of crash testing, a useful tool for predicting the damageability of different vehicles. The encouraging results of that research will be described by Dr. Miller in just a moment.

As we indicated, we intend to make the products of that research available to manufacturers, to DOT, to this committee and other interested agencies.

DOT has already made some informal inquiries into the progress of this project.

Our final comments pertain to those provisions of S. 976 dealing with Federal standards for State vehicle registration and title laws

and for State vehicle inspection programs. We urge that paragraph (b) of section 501, on pages 5 and 6, be amended so as to provide that the Secretary of Transportation in promulgating standards for State registration and uniform title programs, may consider the uniform vehicle code and model traffic ordinance provisions, but is not bound by them as the bill would seem to require.

We consider the uniform code and model ordinance to be valuable tools, but we do not believe, as a matter of policy, the work product of any private or semi-private organization should by Federal statute be automatically mandated upon all of the States, as required by the legislation.

In other words, we think this deserves consideration by DOT in connection with the standards, it should have advisory weight only and not binding effect on DOT.

The remainder of title V of S. 976 would call for the broadening of existing standards for State vehicle inspection programs, and for the adoption of additional incentives to the States for adopting and further implementing such programs. Generally speaking, we support that.

I pointed out that it has been our longstanding policy to support and promote any measures that increase the level of safety of vehicles on our highways.

We also want to make it clear that we share the desire of this committee to do everything possible to assure that vehicles sustaining collision damage involving safety-related parts do not go back on the highways in unsafe conditions. We would be very foolish to take a contrary position because every unsafe vehicle on the highway presents not only a personal hazard, but also an insurance hazard.

We, therefore, wholeheartedly agree with the safety objective involved. The question is: How can the objective best be achieved, whether by a requirement that all vehicles involved in crashes where safety-related parts may be damaged should undergo State inspection following repairs, or by a requirement that the body shop or garage certify the safety of the repairs or by some other means or a combination?

We are not sure at this point. We do not know the answer. And we have not found the answer in any research that has come to our attention.

The one study we have seen, which is the Southwest Research Institute study, does demonstrate how latent damage to safety-related parts can sometimes occur in collisions, and it suggests that it would be desirable to have reinspection of vehicles following collision repairs. But it also indicates that to do so would require more stringent procedures than are now used for periodic inspection. And it also proposes a certification procedure by repair shops in lieu of inspection, where no periodic inspection requirements are in force.

One thing I might add here, we noted in the SWI report it noted that some six States have laws which call for some kind of postcrash inspection. In no other report could you find that the research team had ever gone out to find out how these laws were working, and this is one of the questions we think DOT should go into, in determining how this should be done.

We point out the periodic motor vehicle inspection, although important and a laudable concept, has also proved one of the most complex and difficult in implementation. Some of the States had adopted such programs immediately after the Safety Act of 1966 and had opposition over practical problems which have led to the introduction of legislation to repeal the inspection laws.

Although that has been generally forestalled and the laws remained, several of the programs were amended to water them down a little.

So in light of these practical considerations, we would respectfully suggest the bill authorizing and directing DOT, before taking any action extending the vehicle inspection standards to cover the post-crash problem, to make a comprehensive study of the whole problem and the best means of alleviating it or minimizing safety-related hazards, which research, we think, should include evaluation of the results in States that have and are trying the post-crash inspection procedure, and perhaps the DOT sponsorship or support of experimental pilot programs in one or a few States, to try to find out what the optimum program would be, how it best can be implemented.

What we are suggesting on this subject is it be treated in somewhat the same manner as the bill treats the subject of testing procedures for manufacturers in determining injury potential of various vehicles under section 125(d).

In conclusion, we wish to commend this committee and the sponsors of S. 976 for having identified and highlighted what is by far today's more serious source of spilling losses and rising auto insurance premiums, and for having proposed legislation aimed at that program.

We believe enactment of S. 976 with the modifications we have suggested would serve the interests of the American consuming public.

If your committee should desire any further particulars on any points we have raised, we will be very glad to furnish them and cooperate in any way possible.

That completes my remarks and Dr. Miller is with me. I will follow the wishes of your committee as to whether you would rather ask me questions first or have Dr. Miller proceed first.

Senator HART. A point I would want to comment on here that was raised by your testimony related to the 100 percent cost increase in the last decade of costs.

As I look at it, and as we have heard this testimony, in the area of vehicle repair, to the extent that labor, service, are involved, whether it is the garage repairman or post crash, the insurance adjuster's time, the lawyer's services, individuals will continue to have to do that kind of work and the technology is not going to be able to effectuate cost savings.

So to the extent that we can identify the means of reducing the likelihood of the crashes, preventing the crashes, it is in that area where we could look for the big cost savings. We are sort of kidding ourselves into thinking that even the most disciplined supervision would enable us to substantially reduce the costs reflected in the personal service area.

Am I correct in that? We really have to look at what Cornell is looking at.

Mr. MERTZ. Yes, I think I would be in basic agreement with what you just said. I might say this, I think there is room for improvement,

cost savings, in the area of repair technology as we have gathered from looking at the experience in England and in Sweden.

But there is a very definite limit to how much saving we can achieve there, given the same cars we are dealing with today.

Because I think there are many savings they have made, for example, in England and Sweden in things like the paint process, and better welding techniques, and better use of quarter panels. And there is an opportunity for saving there, but it is nothing, in my opinion; it does not compare with the opportunity for saving through improved design of the automobile and particularly bumper technology.

In other words, I suppose it could be roughly comparable to preventive medicine.

Senator HART. I just whispered to Mr. Sutcliffe it is the same thing.

Mr. MERTZ. Right. In other words, you can do just so much—

Senator HART. Yes; group practice will help somewhat, but staying healthy is the chief effort.

Mr. MERTZ. Yes. Of course, one of the reasons we are interested in the technological side of it is this: No. one, as car design is improved, we come up with improved bumpers, each year at the most that is going to replace only 10 percent of the vehicles on the highway. So if we have an ideal bumper a year from now, and let's say it has a tremendous effort on cutting down the losses for cars that have it, it is still going to take 10 years before that achieves a full effect.

In the meantime, we have to stay in business. So the repair technology side is very important. The other thing is I think that just for the health and preservation of the repair industry, something needs to be done. We feel that one of the greatest benefits that could come from a crash repair research center would be the innovations for the repairmen themselves.

We are talking about something where there would be experimentation in improved technology and very definitely try to get them to participate in seeing what is going on, improve their techniques, and they would be one of the prime beneficiaries of it, because we know that they are losing men. They are having a hard time.

Part of it, I think, is because of the technology not having kept up. The efficiency of operations of their enterprise has not kept up with the times. We think this would be a great help to them, too.

Senator HART. I am reminded that with many others we have been urging the insurance industry and the automobile manufacturers to establish, to set up such a research center for the reasons you have explained. What does Ithaca have to tell us?

Mr. MERTZ. Senator, I just wanted to say one other thing in introducing Dr. Miller, that he is a native of Michigan, and grew up near Traverse City and was educated in the Michigan schools.

Dr. MILLER. Thank you. I am here today to present information on the vehicle damage study at Cornell Aeronautical Laboratory that is being sponsored by the National Association of Independent Insurers. In addition, I would like to make some comments concerning the relationship between designing structures for vehicle damage reduction and for passenger safety or protection.

Before proceeding with the discussion on the vehicle damage study, perhaps some background information would be helpful to the committee. Cornell Aeronautical Laboratory is an independent, nonprofit,

scientific organization wholly owned by Cornell University. The laboratory, as an independent research organization, has participated in various scientific investigations. One of the most notable activities has been in the area of automobile research where substantial contributions have been made during the past 20 years.

With recent increased emphasis on automobile safety, research in this area has expanded dramatically during the past few years. Indeed, research directed toward providing occupant protection during automobile crashes constitutes the most significant and important efforts within the present automobile research projects. The U. S. Department of Transportation is the major sponsor for these projects which include, for example, studies related to automobile structural crashworthiness, underride guards for heavy vehicles, development and testing of inflatable occupant restraint systems, development of computer models for simulating both the automobile and its occupants during various crash situations, development of an accident reconstruction model, and the investigation and analysis of accidents in the western New York area.

It was principally the automobile safety research efforts that provided the impetus for our becoming interested in the problem of automobile damage during low speed collisions. From a structural point of view, there is a close relationship between the structural requirements during low speed collisions and the structural performance needed to provide for occupant protection during the higher speed impacts. Indeed, if consideration is given simultaneously to both problems, structural requirements designed to reduce vehicle damage could result in corresponding improvements related to occupant protection.

Dr. William Haddon, President of the Insurance Institute for Highway Safety, recently appeared before this committee and referred to a statement of mine which essentially indicated that there is no apparent incompatibility between designing vehicle structures for occupant protection, while at the same time, providing for vehicle damage reduction during the low speed collisions. I would like to take this opportunity to reinforce this point but to present the arguments in a slightly different manner.

Senator HART. I should explain that I think Dr. Haddon was responding to a question that I asked as to whether there is an inconsistency. We have been on their back to make cars safer. One way to do this is to make car front ends collapsible, and now we are on their back because it is so fragile.

Dr. MILLER. Yes. The points I am making there are, the strength of present automobile structures is too low, that injuries do not occur during low speed impacts, because of the low severity of the collision, and not because of the structure design.

The third point is that the occupants' response during low speed collisions is independent of the vehicle structural response.

The fourth point I would like to make there—

Senator HART. Wait a minute now. Read that third one again.

Dr. MILLER. The occupant response at low speed is independent of the vehicle's structural response. What I am really saying—

Senator HART. What happens to the passenger is—

Dr. MILLER. What happens at low speed is, two cases must be considered. You have an unrestrained occupant in one instance. The vehicle will stop and the interior stops before the occupant starts to move, so he will hit the inside of the vehicle at about the same speed that the vehicle was traveling upon impact. Since the vehicle interior stops before the occupant hits it, the unrestrained occupant cannot benefit from the structural response.

Now, the other case is where you have an occupant wearing a restraint system. The vehicle comes in at low speed, but the restraint system has some slack in it, because of the flexible belt and the soft nature of the human tissue. It will take a velocity change of at least 5 miles an hour between the occupant and the vehicle interior before the restraint system tightens up. So you have a velocity change in the order of the low-speed change before the restraint starts to work.

So even in the case of the unrestrained occupant, I seriously question whether the occupant gains any benefits from the structural response of the vehicle.

Mr. SUTCLIFFE. At that point let me ask you is that information based upon present vehicle design?

In other words, there is no ridedown effect in existing vehicles?

Dr. MILLER. No. There can't be, because as I pointed out in the technical discussion, and this is partially based on information generated by the people at General Motors, they came up with a general indication that the distance between the occupant and the interior must be half the crush distance of the vehicle before he can benefit from ridedown.

So for a 5-mile-an-hour collision, in the test we will show later, we had about 5 inches of collapse. That means for ridedown to occur, an occupant would have to be  $2\frac{1}{2}$  inches away from the instrument panel to benefit from ridedown, and for 10 miles an hour collision, he would have to be 9 inches away.

People just don't sit that close to the interior of vehicles.

Mr. SUTCLIFFE. And that situation and analysis was with present vehicle structures?

Dr. MILLER. Yes, our tests were on 1970 cars.

Mr. SUTCLIFFE. And the information they presented was on present vehicle structures?

Dr. MILLER. We have looked at both present vehicle structures and structures that might be constructed.

Mr. SUTCLIFFE. Let me be specific as to why I asked that question.

We have now been given a bumper standard by the Department of Transportation designed to insure the safety of the vehicle in operation. There is no requirement in that standard as to the impact, on the passenger himself, of the bumper design that is utilized to meet the bumper standards.

On the basis of the information you have presented to us, it would seem that there would be no need, at that speed, to have any kind of standard related to the passenger.

However, let me pose this hypothetical question and have you respond to it: What if the 5-mile-per-hour front-barrier capability set forth by the Department of Transportation was met by a device in the front of the vehicle that had a bounceback, G force, coextensive to the impact speed.

In that situation, would the G force level of the passenger be markedly increased, whether in a restrained capacity or unrestrained capacity?

Dr. MILLER. What you would do in that case, at 5 miles per hour, you would effectively take a 5-mile-an-hour collision and turn it into an acceleration equivalent to a 10-mile-an-hour collision. That is the worst situation you could have. My feeling here also is that we have to get somewhat above 10 miles an hour before you have a real problem with injury.

Now, if the specification—so I would say that omitting the rebound at 5 miles an hour is not a problem. However, if the standard was set for 10 miles an hour, I would question whether you did not have to consider the rebound phase, because a 10-mile-an-hour collision, you see, would have the potential, if you had full recovery, full rebound, resulting in something close to a 20-mile-an-hour collision. I believe collisions between 10 and 20 miles an hour are in the range where you are getting into the injury threshold.

Mr. SUTCLIFFE. You make the statement in your prepared testimony that a 10-G force level is possible at a 5-mile-per-hour barrier crash. Are you suggesting that a 20-G force upon the restrained or unrestrained occupant is tolerable? Not injury producing?

Dr. MILLER. Yes. I didn't go so far as to recommend that, I indicated in the testimony that I would recommend limits consistent with the safety vehicle, the proposed 2,000-pound safety vehicle, because I don't see how those could be questioned. Even a 20-G response does not present any problem concerning occupant injury as far as I can see.

We are going to look at that in a little more detail next year. I really think that the occupant's response will be found, during low-speed collision, to be completely independent of the vehicle response, so I don't think it will make any difference.

But I think that with the higher acceleration level, rebound may increase, because you won't be able to dissipate the energy as effectively.

But personally, I don't feel that this will constitute a problem.

Mr. SUTCLIFFE. For the record, could you provide the committee with the biokinetic information that allows you to make the judgments as to what the G force tolerances for the passenger would be?

What the G force tolerances are before you would consider it a problem in injury production?

Dr. MILLER. Well—

Mr. SUTCLIFFE. You don't have to do this at this point, just submit it for the record, so we have that information in the hearing record.

Dr. MILLER. Yes. Well, the point here I think, though, that should be understood, is we are not only talking about the deceleration force, but we are talking about some measure of that deceleration force.

What we are really talking about is something that is looked at a severity index. What that index does is weight the deceleration values and give more weight to a higher value than it gives to a lower value.

Now, the severity index, commonly called the Gadd number is currently being used. We speak of numbers on the order of 1,000 on the head as being near a fatal situation. In all of these situations I am talking about, I am sure you will find Gadd numbers well below that, on the order of 200 or 300, or something like that.

And we could provide that kind of information to you.

Mr. SUTCLIFFE. Thank you very much.

Dr. MILLER. Then finally, the other point that I would like to make is that increasing the structural strength means the bumper could be placed a reasonable distance away from the sheetmetal, which would improve the vehicle damage situation. But, more importantly, I believe the increase in the strength would provide more distance for energy absorption during the higher speed impacts where occupant injuries normally occur.

All I am getting at here is that if we have a very soft car, and 10 miles an hour is really a very small amount of energy when you are talking about something like a 40 mile an hour crash, in fact, a 10 mile an hour collision has one-sixteenth of the energy that you have in a 40 mile an hour collision.

So if you are going to give up 18 or 20 inches of that structure, just to take care of about 6 percent of the energy in a 40 mile an hour crash, then the remaining distance between the occupants and that 20 inches has to be used to dissipate over 90 percent of the energy. That is the way the present situation is.

So now if we can reduce the 10 mile an hour collision so it takes 4 to 5 inches, then we gain something on the order of a foot for energy dissipation at the higher impact speeds. It is within that context that I see the two problems directly related and feel improvements of the vehicle damage situation would result in a corresponding improvement for occupant's protection.

I am talking about protection of restrained occupants, now, during the higher speed collisions.

Mr. SUTCLIFFE. Perhaps I can ask a question at this point. You have done experimental work under contract with the National Highway Traffic Safety Administration on an occupant protection system built into the vehicle, oftentimes designated as a "plastic hinge;" is that correct?

Dr. MILLER. That is a structural concept that we developed and worked on. We are working on that at the present time for the National Highway Safety Administration. The program is Basic Research in Crashworthiness, Contract FH-11-7622. Well, we have increased the strength, but what we are trying to do in that program is get a uniform rate of energy absorption during the crash distance of the vehicle.

Mr. SUTCLIFFE. What happens when you bang that plastic into a barrier at 5 miles an hour or 10 miles an hour?

Dr. MILLER. Well, we did that. We were not, I guess, strictly speaking, required in our work statement to do it, but it was an opportune time one day when we were out on the track. We ran 5, 10, and 15 mile an hour impact tests. At 5 miles an hour, we observed no damage; at 10 miles an hour we began to observe some permanent collapse. The peak deceleration levels I think were about 12 to 15 G's for 5 miles an hour and perhaps 20 G's at 10 miles an hour.

The problem I see is not the deceleration level, but we did have more rebound than I would like. We are going to look at that area and I hope during the next year come up with a better way of mounting the

bumper to the connecting struts. I think we can eliminate that rebound problem or reduce it substantially.

Mr. SUTCLIFFE. So in your crash-worthiness program, a technology developed for better crash-worthiness, had a direct payoff in the property damage susceptibility area, or appears to have?

Dr. MILLER. I think it has potential for it. I don't want to make premature claims here, because as you know on that crash-worthiness program we are primarily interested in looking at the problem in terms of severe accidents, to see what we can do for the occupant. Once we come up with a system that will give the occupant benefit under the severe collision situation, then we want to make sure that at the low end of the velocity scale we have not changed the injury potential.

Because the fact remains that about 10 percent of all accidents result in injury. We don't want to increase that, and there is no point in our opinion in that program looking at the low end of the velocity range until we have demonstrated we can do something at the high end.

Now, we first looked at severe single vehicle accidents, and we came up with a structure that we thought, and we know demonstrates better performance. Then we considered what would happen if we took this vehicle structure and introduced it onto the highway, where it would not be likely to hit the same kind of vehicle, but rather hit other production vehicles. So this year we have conducted a number of car to car tests, where we have impacted the modified structure into essentially production vehicles. We have found that in front-end collisions, the performance of the production vehicle is not degraded from what it would be if involved with a present vehicle.

Now in side impacts, we find we have degraded performance somewhat, so we are working further on the front structure—

I am talking about an impact where a modified front structure hits the side of a production vehicle. We feel that we may have to back off on the strength requirements perhaps in the first 6 inches of the vehicle to insure that the side impact situation is no worse than it is now.

We don't feel we will have to reduce the strength in more than the first 6 inches, of the front of the vehicle and we are not talking about a reduction to the levels of present vehicles; we are talking possibly—it is hard to say, but maybe 10 to 20 G responses, in that initial collapse distance. But these changes will be dictated. I am convinced, by the side impact problem, not by the response at lower speed collisions.

Mr. SUTCLIFFE. Thank you very much. I didn't mean to interrupt your prepared testimony.

Dr. MILLER. I would like to make one more comment on this. When I was talking about the increased potential for occupant protection with increased strength of the bumper this relates to the front structure. I do not want that to be interpreted as meaning that I am not advocating improved bumpers on the rear of the vehicle; but with an improved bumper on the rear of the vehicle, it could not be argued that the bumper would have a corresponding increase for the protection of occupants simply for the reason that very few occupants are seriously injured in rear-end collisions, where with front-end collisions you have a high number of occupants that are injured.

I just wanted to point that out so it would not be construed that I was advocating lower requirements in the rear of the vehicle, that is

not the case; it is just that we could not argue you had a safety benefit accompanying it.

Now, I would like to present some information on the National Association of Independent Insurers' vehicle damage analysis project. The objective for this study is to determine the feasibility of using mathematical analysis as a tool in determining the damage susceptibility of automobiles. The fact that this is a feasibility study should be emphasized.

Last spring NAII contacted Cornell Aeronautical Laboratory concerning the possibility of implementing a vehicle damage study. Their purpose was to determine what approaches might be employed if one was to evaluate the damage susceptibility of a wide range of vehicles under a number of different impact conditions. One approach, quite obviously, would be to purchase a large number of vehicles and then subject each vehicle model to the various test conditions. When all possible test conditions are considered it soon becomes apparent that this approach—if continued year after year with all classes of vehicles—would be an extremely time-consuming and expensive proposition.

A possible alternative approach would be to develop an analytical model that could be used in conjunction with limited experimental testing to eventually accomplish the same general objective. It should be noted that the intent in developing such an analytical model was not to replace the need for conducting controlled tests, but rather to greatly limit the number of vehicle tests that would be required.

Another benefit of such a model would be that it could identify the contributions that various vehicle components might make in terms of reducing vehicle damage. For example, the effect of changing the structural properties of the bumper could be quickly evaluated by a computer run without resorting to the fabrication of a vehicle and subsequent testing. Likewise, the effects of structural changes for other components could be quickly and economically investigated through such computer runs.

Controlled tests to validate these computer simulations were conducted. Now we will show some of the films taken from these test results. It should be noted that the only purpose of these tests was to validate the mathematical model.

(Showing of film.)

The first scene is of the impact at 5 miles an hour. The speed is a normal jogging speed. The vehicle is operating under its own power during all of the tests. This is a 45-degree view, high-speed photograph, a thousand frames a second. The vehicle collapsed about 5 inches, very nearly the same as we predicted with the computer model.

Here is an underneath view. It is really this view that is of the most interest to the structural engineer. We paint the vehicle structure different colors so we can identify the various vehicle components. This is the vehicle after a 5-mile-an-hour frontal test into a rigid pole. This is a real time rear-end impact at 5 miles and hour. This collision resulted in about 4 inches of exterior deformation and that is very close to what was predicted by the computer model.

We see the vehicle after the impact. An identical vehicle was subjected to 10 miles an hour front and rear tests. We actually did the rear test before the front. The reason we did that is because the radiator was lost in this test, but I am showing it in reverse order.

Again this is a high-speed photographic view. This test resulted in about 17 inches of deformation. The computer program predicted a value of 14 inches. Here we see the view from underneath the vehicle graphically showing the displacement of the radiator.

Those wheels, incidentally, in the middle of the screen are guide rollers that are used to guide the vehicle prior to impact.

This is the vehicle after the 10-mile-an-hour collision into the rigid pole. Here we see the 10-mile-an-hour rear impact.

I am showing this underneath view because it shows that substantial deformation of the fuel tank took place. The tank was loaded with a fluid that demonstrates some of the characteristics of gasoline, and it should be noted that no leakage occurred.

This is the vehicle after the 10-mile-an-hour rear collision.

(End of showing of film).

Now, we have summarized the comparison between the predicted deformations and measured deformations, and you can see for the 5-mile-an-hour cases the computer predictions are very close to those measured; however, at 10 miles an hour we are comparing values of 14 to 17½ and 10½ to inches. So it is worth noting that the analytical predictions were reasonably correct for 5-mile-an-hour impact; however, for the 10-mile-an-hour cases they tended to predict values somewhat lower than those recorded in the tests.

These results for the 10-mile-an-hour collision were further investigated after the test. As a result of this investigation the modeling of the hood and radiator support structure has been refined. Similar refinements were made for the trunk region on the rear structure.

We are now in the process of checking the validity of the refined program. For this purpose a 1969 Ford has been purchased. A Ford was selected for these tests because it represents a structure that is quite different from that of the Chevrolet. Measurements have been made and the input data are being prepared for the computer. It is expected that the computer analysis will be employed before the end of the month. At that time we will conduct 10 mile-per-hour front and rear tests on the 1969 Ford. These results will be compared to those predicted by the computer.

At the present stage of the study our tentative conclusions are:

(1) Within the scope of this program the feasibility of predicting vehicle damage has been established. That is, the present model is highly accurate at 5 miles per hour and is expected to be refined to be accurate for the 10-mile-per-hour collisions. When this latter phase is completed a valid model will be available for this type of impact condition.

(2) An attempt should be made to generalize these limited results to other situations; that is, to consider different impact conditions and different types of vehicle designs. The result of this generalization would be a computer program that would allow various potential users the flexibility to quickly and economically analyze various vehicle damage situations.

At this point I would like to briefly summarize how such a generalized analytical model could be used as a tool in evaluating the low-speed structural performance of automobiles. An important application for this model would be in reducing the number of full-scale tests required. For example, a vehicle might be impact tested at 10

miles per hour and mathematical analysis used to determine how the vehicle would perform at other impact velocities. Furthermore, usually only minor structural differences are evident between many of the automobiles produced by the same manufacturer. The mathematical model could be used to determine the effects that these small differences would have on performance without requiring full scale tests of all vehicles produced by a single manufacturer.

We plan to issue a final report covering the project early this summer. Copies will be available from either the National Association of Independent Insurers or Cornell Aeronautical Laboratory. Upon request copies will be furnished to Congress, automobile manufacturers, governmental agencies and other interested parties.

Senator HART. Thank you very much, sir.

I confess I am going to have to read much of what you told us more than one more time, but I do get one message clearly. You see as completely within hand the accuracy of computer testing rather than testing the production automobiles.

Dr. MILLER. I think it is essential that we begin to do this, because as I said perhaps somewhat facetiously at times, that if we keep up this business of crashing cars for safety and for vehicle damage, we are soon going to be crashing as many cars as the automobile manufacturers are selling to the consumers.

So it seems to me we have to find ways of cutting down the number of tests. And this I would hope would help.

Senator HART. I am not sure I want to go on the record as opposing selling twice as many cars as we presently do.

Mr. MERTZ. Senator, from a layman's standpoint, I am certainly not an engineer, it seemed to me—and Dr. Miller can disagree if he sees fit—I don't think he will disagree, because he points this out in his statement, I think it is very significant—it is one thing to determine that when a certain vehicle crashes against a certain kind of barrier or in a certain situation, a certain amount of damage occurs, but that is only part of the battle. The most important thing is to find out why did it occur, why was the damage as great as it was? What feature of its construction contributed to the damage and what minimized it?

In other words, the analytical approach we felt at the outset hopefully would help us not to tell just what happened, but why it happened. And therefore enable zeroing in on the feature that could be improved. Because a given car might have embodied in it a number of good design and bad design features and they are balancing each other and they might produce a sort of lukewarm result.

If we can separate out which are good and which are bad, it would help them reinforce the good and minimize the bad.

Does this sound right, Dr. Miller, that it would help give you the answer as to the why something happened?

Dr. MILLER. Yes, that is essentially it. We need a way of analyzing the situation to really understand the interaction between the various components. This is one possible application of the mathematical tool.

Senator HART. I am just trying to fish out from the many sets of figures we have, how much we are talking about in dollars each year as a result of the kind of accidents that we saw on the film, or all accidents.

I am referred to a figure of \$5,500 million as the annual economic loss in car damage. That is the figure projected for this year.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Dr. Miller, it is important for the purposes of our hearing record for you, in your capacity and with the testing you have done, to answer the following question or series of questions to the best of your ability.

Let me suppose that I took six very refined pictures of an automobile that had been involved in a minor front-end collision, and I put them before either your trained eye or the trained eye of a claims adjuster. And I did this not just with one vehicle, but with a whole series of vehicles that had been involved in front-end collisions and rear-end collisions.

Could you, with any degree of precision, tell me the speed into the particular object that those cars had been traveling?

Dr. MILLER. Well, first I would like to say that that is not the type of thing that I do, and I would be probably less accurate at it than the professional people that do it.

We have at Cornell an accident research branch that I referred to earlier in the statement, and we have people that are trained in doing that type of thing. In fact, the only way you get the impact speed of accidents is to look at photographs or look at the vehicles and essentially have these people that are so trained make these estimates.

Our experience at Cornell is to the degree that you probably could make the following separations: You could probably group cars somewhere in the order of 0 to 5 miles an hour.

Mr. SUTCLIFFE. Could you tell between  $2\frac{1}{2}$  miles an hour and 5 miles an hour, in your opinion?

Dr. MILLER. I doubt it. I do not think they could. I think they could tell the difference between a 5- and a 10-mile-an-hour collision. But supposing it was 5 and 7, I seriously doubt that these people could provide that type of precision. At least the people at Cornell tell me that and that is your experience. Of course, no one really knows how accurate you can be, because there is no way to really check this. But our experience would be that you could not tell the difference between, say, 5 miles an hour and perhaps 2 or  $2\frac{1}{2}$  miles an hour. But, again, this must be accepted as a judgment on the part of the people doing that work, because there is no way you could check to see how precise it really was.

Mr. SUTCLIFFE. Even as to one individual going over all of the claims and the pictures, you still question the accuracy of determining precise speeds of impact for those accidents?

Dr. MILLER. Right. Particularly in the low-speed range.

Mr. SUTCLIFFE. Particularly between  $2\frac{1}{2}$  to 5 miles an hour.

Dr. MILLER. Yes.

Mr. SUTCLIFFE. Or 5 to 7 miles an hour.

Dr. MILLER. Yes.

Mr. SUTCLIFFE. Thank you.

Mr. Mertz, let me ask you a couple of questions based upon your testimony.

Mr. MERTZ. Yes, sir.

Mr. SUTCLIFFE. You mentioned that some insurance companies have advertised a cost savings for their collision premium ranging from

perhaps 10 to 20 percent. Has your association surveyed your member companies to determine how many other companies within your association would follow suit if property loss reduction standards were set on motor vehicles or rating systems developed for those vehicles?

Mr. MERTZ. We have not surveyed the full membership and asked that specific a question, but we have, I would say, a pretty good cross-section of sample in our board of governors, which consists of about 35 companies, companies of all sizes. I would say those 35 companies probably write 75 percent of the premium volume, maybe 70 percent of the premium volume of our companies, so it is a pretty substantial segment. It has been discussed in our board, and our board is on record as a matter of NAAI policy urging our member companies to give appropriate rate recognition to design improvements, bumpers and other design improvements, just as quickly as credible data can be produced to make those adjustments.

Now, I dare say that there may be some variations among the companies as to how they do it. Several companies, on that board, have indicated they have already filed in several States a discount, and they are ready to give it if the bumper meets certain qualifications.

Others have said in response to our questioning of them that they do certainly intend to give rate recognition, they want to, they will just as soon as there is credible data upon which to base that.

I can say that it is my expectation that there will be a very good response by our companies to giving rate recognition just as soon as we can provide the data on which to do it.

Now, of course, this would mean that the improved bumpers are going to have to come out. They have to be a fait accompli. You have to see them and be able to make some pretty good evaluations as to what the loss-producing propensity will be.

We hope, too, when the manufacturers come out with those models of cars with those bumpers, that the manufacturers will come forward—of course, if S. 976 has become law and is in operation, they have to provide the data that you call for, that is going to be a great source of that data. But absent that, we would hope the manufacturers would provide some good hard data as to what they expect their bumpers to do in terms of reducing the loss exposure.

Then our job would be to evaluate it and see whether it is sound. This is, of course, where Cornell comes into the picture and its experimentation.

Mr. SUTCLIFFE. Have you or anyone within your organization had an opportunity to do any cost-benefit analysis, analyzing the amount of potential premium that could be saved by consumers compared to any potential increase in cost for new bumper technology?

Mr. MERTZ. No. One serious obstacle we run up against is we have no access to any figures as to what the new bumpers are going to cost and what they should cost. Some of the manufacturers have in discussions with us given figures, not just with us, but I think in public statements. General Motors has made some projections as to what they think it will cost, or what they will have to add to the price to put a bumper of a certain capability on a car. But we have no way of going behind that and determining whether we would agree or might disagree with them on those figures.

If we could be supplied with the data that would show—if we could be shown, let's say, some prototype information about that car, its bumpers, the drawings of it, in some detail, I believe we could, through Cornell, as they perfect this technique they are working on, apply that to real world data. This is our next step, to develop the real world data about crash configurations, how many front-enders, what angle and so forth, that they could translate into information on what that would do to the hazard, how much it would reduce the hazard. So we could develop that information on the car and its performance if we were given the proper information.

But, as far as the other part of the question, the additional cost of that bumper, putting it on the car, we are really in the dark and we do not know any way to ascertain that other than from the manufacturers supplying that information.

That brings in the question of whether there will be some additive cost or whether it is something that should be considered——

Mr. SUTCLIFFE. Let me say we hope these hearings will be helpful in providing that kind of information to the insurance community.

Let me ask you, in your experience in purchasing a new car, when the person makes up his mind to buy the car, in a time frame, and when he then obtains the insurance for that car, does the decision to buy the car precede or follow the decision or the search for insurance?

Mr. MERTZ. I think in most cases the decision to buy the car precedes the search for insurance, because in most cases the buyer already has a car, he already has insurance, he is not required under his insurance policy even to notify the company about having changed cars until commonly at least 30 days to notify them and his insurance automatically covers any new car he buys for at least a period of 30 days.

So I think most purchasers, they would not at the time they buy the car, they would not be either simultaneously buying insurance or previously.

Mr. SUTCLIFFE. Given that circumstance, how are insurance rate differentials based upon the characteristics of the motor vehicle going to influence the free market system to encourage the purchase of vehicles with low susceptibility to damage? In other words, how is the consumer going to know that if he purchases "X" car his insurance rates will be lower than if he purchases "Y" car, if in fact the search for insurance takes place after he has made up his mind to buy the car?

Mr. MERTZ. If I know human nature, and in the auto manufacturing business, just as in the insurance business, the auto manufacturer whose car gets a good rating is not going to hide that fact under a bushel, they will let the public know about it. I would anticipate the first thing they would do, once they find out what their rating is, is to notify all of their dealers, and their dealers will be using that as a sales tool for the sales of those cars.

I believe this has happened in England and in Sweden. And there where they rate cars. in Sweden, for example, where they rate cars for insurance, partly because of design, largely because of design——

Mr. SUTCLIFFE. Let me stop you there.

You mean General Motors is going to let its Oldsmobile Division advertise the fact that it has much better bumper capability than the Chevrolet Division?

Mr. MERTZ. Well, maybe so or at least better than Ford. And it isn't going to be so much the distinction between Oldsmobile and Buick, as it will be between Chevrolet Impala and a Ford Galaxie. That is where they will do the advertising.

By the way I have in my briefcase and I will leave with you, an advertisement in a magazine that I clipped out just before coming here, in which an automobile manufacturer has already bragged about the fact that the rates on its car, which is in somewhat the sporty category, that this car gets standard insurance rating, and that is the headline in the ad "Our car has standard insurance rating."

Mr. SUTCLIFFE. So this is the reason you don't think it is necessary to provide any kind of touchstone cost information to the car purchaser at the time of purchase, that he will have already been given the information as to the insurance cost of that particular vehicle through the advertising media.

Mr. MERTZ. Yes. And let me make myself clear on what we were objecting to on that provision. As we read the provision, it seemed to require the dealers in effect to become insurance experts and provide a lot of detailed information about rates of different companies and rates of various cars. Perhaps that was not the intention of it.

Mr. SUTCLIFFE. Let me stop you there and perhaps explain that cost savings for the youthful driver may be much greater than for the average driver, middle-aged driver.

Therefore if the youthful driver had that information, it might profoundly affect his choice of vehicle. That is why we had some differentiation as to the age of the person. We weren't asking that they sit down with the rate book and figure out how much a particular person's insurance was costing. We were thinking of some kind of touchstone to get various degrees, so it would have the maximum impact on the consumer's buying.

Mr. MERTZ. Yes, and understand we don't mind the idea of that impact. We would like to see that impact felt. We think one of the major purposes of insurance rating according to design would be lost if the public didn't get the message. We sincerely think they will get the message through advertising. If it turns out they don't, we will be very amenable to working with anybody who wants to work on it to see that they do get that information.

Mr. SUTCLIFFE. Would you be adverse to the Secretary of Transportation or the FTC having authority to monitor closely the advertising practices of the companies in promoting their vehicles and their insurance rates?

Mr. MERTZ. This would be the automobile manufacturers?

Mr. SUTCLIFFE. Yes. That is one area you suggested. You said the manufacturers might tout their cars as having a certain degree of property damage susceptibility protection, and lower insurance rates. Some of our advertising messages right now get somewhat garbled in the transmission.

Mr. MERTZ. Yes. Of course I would gather right now—I have never thought it through, but I suppose any interstate advertising by auto manufacturers right now is probably subject to FTC jurisdiction insofar as anything deceptive.

What you are saying is maybe to create an affirmative duty on the part of the manufacturer to provide certain information? You are

not talking about deceptive advertising as much as making them come forward with advertising!

Mr. SUTCLIFFE. It was just a thought? It is not necessary for you to comment.

Mr. MERTZ. My reaction would be I would hope that wouldn't be done unless it was felt it was a last resort, I do think it would be a fair question to ask of the manufacturers when they testify, whether indeed they do intend voluntarily to make information of this type available to the public. I think that would throw a lot of insight into it. If I were in their position I think I would, especially if I got a good rating.

I suppose if I got a bad rating, my car was the worst on the list, I wouldn't be advertising that. But if the ones that get the good rating, the cars that get the good rating, mention this in their advertising, supply it to the dealers, the dealers post it on the walls in the showroom, "Our car got a high rating," that probably would create a desirable effect without having to have someone force a dealer who has a bad rating to disclose this to his customers. That is a little tough on him, to have to tell the customer he has a bad rating or to volunteer it to the customer.

But I will say that we would hope that the public is apprised of this. We have a feeling it will be. I know, for example, in Sweden that one auto manufacturer had a bad rating and reduced its parts prices something like 15 percent overnight in order to get his rating improved. I don't think in Sweden there is any requirement that the dealers have to give all of this information out. I think the word gets around.

I might say the experience on the muscle car situation indicates the word certainly gets around in a hurry. Those young drivers that want the muscle cars, it didn't take more than a week or two before they had the word that the muscle cars were getting rated up 50 percent. And that really hit the sales of muscle cars in a hurry.

Mr. SUTCLIFFE. In your statement, Mr. Mertz, you mention that there is an Achilles heel to the automobile insurance problem, that being property damage loss. Since the auto compensation system is a human system, I would suggest that there perhaps are more than one Achilles heel in the system, and for the record I would like to point out that the two-thirds premium collected for property damage and the one-third premium collected for personal injury, results from a rather marked disparity in the payment of the loss that occurs within the system.

For example, the car damage premium is \$8 billion, the net benefits paid were \$4.6 billion of the \$8 billion in premiums, but the economic loss exceeded the payment by \$1 billion. So we are compensating 83 percent of the property damage loss.

In the bodily injury area, it breaks down at \$6 billion for premium collected; net benefits paid, \$2.4 billion; compensable economic loss, \$6.5 billion; for a 37 percent compensation on the basis of bodily injury.

So to state that the premium cost for insurance is two-thirds and one-third is an accurate statement, but in terms of our present compensation system, that ratio is because we pay much less, or are required to pay much less of the compensable loss as to bodily injury

than we are as to the vehicle itself. And this is what has prompted the statement that we are treating cars and the repair thereof much better than we are treating people and their repair.

Mr. MERRZ. First, in my remark about Achilles heel, I did say cost-wise. In other words, we are saying here is where we are suffering the staggering losses, whereas the bodily injury side, loss-wise, used to be considered the bad boy, but by comparison now we are not losing as much money on that as the damage side.

There is where the dollar outflow is going, even far more than in relation to the premium difference. Also we felt that probably the greatest opportunity for achieving reductions in premium costs, that is, trying to stabilize premiums and bring them down, the greater opportunity for doing it probably lies on the material damage side, for one thing because the losses are bigger, and because, perhaps, it will respond to some physical things like designing the car better, which is not going to make anybody mad. In other words, everybody benefits by that. There is no real controversy.

On the bodily injury side, we acknowledge that if you measure the cost efficiency of the system solely in terms of comparing the net dollars going into the claimants' pockets with the amount of premium that was paid into the other end, that the so-called cost benefit ratio is not as high as it is in the physical damage field, partly because, of course, physical damage has comprehensive and collision which pays off directly without intervention of a lawyer.

Now, although my statement didn't actually cover this, we would certainly agree that there should be, there needs to be a marked improvement in the cost efficiency on the bodily injury side.

We perhaps do not see eye to eye with some on the committee as to how harshly or how sympathetically you should judge the fault system. We think for one thing that to look at it solely from the standpoint of cost efficiency, that perhaps it should not only be looked at from that standpoint. But talking only about the cost efficiency, we are certainly dedicated to improvements of that, and without getting into the whole subject of Mr. Lemmon's paper, I would want to point out that the program we are espousing, the dual protection plan, which does not go as far as S. 945, the no-fault direction, but goes a substantial step in that direction, that program will greatly improve the cost benefit relationship, because roughly 90 percent, or more than 90 percent of the medical expenses and—let me put it this way: More than 90 percent of the cases, injury cases, involve medical expense and wage loss which falls within the first part of the coverage we would mandate through our program.

In other words, we would mandate on every policy enough medical, enough disability coverage, to take care of over 90 percent of the cases, accident cases. This means that those people would be getting that money immediately, on a no-fault basis, they wouldn't have to hire a lawyer to get it, they wouldn't have to go to court, file a suit or anything else.

Obviously if that took place, it would make quite a change in the cost benefit ratio. I can't say precisely how much.

Mr. SUTCLIFFE. With the Senator's permission, one of the written questions to Mr. Lemmon would have involved that exact cost data that he mentions.

Mr. MERTZ. I might say it will also cut down litigation.

I noticed in one of the DOT reports that they pointed out in cases where suits are filed—this is a different way of looking at it—in cases where suits are filed, that one-half of the recoveries are \$3,000 or less. Our program, as far as the amount of first-party coverage we put in the policy, is going to go well above that. So it gives you an idea of how many of those law suits would be obviated under the program we are suggesting. Of course, our program then provides for automatic offer with right of rejection of a catastrophe economic loss coverage that would take those limits up to \$100,000 per person per accident. So for all people who didn't reject that, you would again be provided with a great deal of immediate payment without having to hire a lawyer to get it.

Mr. SUTCLIFFE. On those first-party coverages, does that establish a level of tort exemption?

Mr. MERTZ. The person who is entitled to recover those benefits must set them off against any tort action he may bring.

Mr. SUTCLIFFE. What about if he is sued? If he is a defendant in an action?

Mr. MERTZ. If he is defendant?

Mr. SUTCLIFFE. Yes. And someone else has those first-party mandatory coverages?

Mr. MERTZ. The other person, that is any person who sues, any plaintiff, who is entitled to recover first-party benefits under the policy that we are talking about, whether he be the owner of the car, passenger in the car or pedestrian hit by the car, that person is entitled to those first-party benefits. He automatically would have to offset that amount of those benefits against any recovery he could make in a lawsuit against the third person.

In other words, let's say if his total economic loss fell within the limits of that mandatory coverage we prescribe of about \$8,000 worth of first-party benefits that are mandatory, then he has no lawsuit left for economic loss.

Mr. SUTCLIFFE. His only recovery would be in the intangible loss area?

Mr. MERTZ. Right, and there we have a formula to apply to the less serious cases.

Mr. SUTCLIFFE. That is important, because in Mr. Lemmon's testimony it was unclear as to the exact relationship between the two.

Mr. MERTZ. We definitely would prevent duplicate recovery within the tort system.

Mr. SUTCLIFFE. We will explore that in questions submitted to you. One last question: You have supported S. 976 calling for Federal standards for property loss reduction.

There will be some that will argue that because the States are experimenting on a State-by-State basis with bumper legislation, that we should allow the State-by-State experimentation to proceed without establishing national standards. How would you respond to that?

Mr. MERTZ. Let me say first that I think the State bumper laws have provided, have served a worthwhile purpose. I think they have stimulated action on the part of the auto manufacturers and they have, I think, aided in highlighting this problem and focusing attention on bringing a solution to it.

It may seem to some people that it is uncharacteristic of our association to support anything Federal. I think some people probably prior to today would have thought we would automatically be against anything Federal. That is not the case.

Our position is that the regulations of a given activity or pursuit should be carried on by—in determining which level of government should do it, and I agree with Clay Johnson, we don't think there should be a dual regulation—we think it ought to be carried on by that level of government based on several factors.

No. 1, which government level is best suited. In the first place, is the activity something which can only be sensibly, logically, and reasonably regulated at one level or the other.

Let's take the characteristic of the basic design of an automobile. We are talking about basic design, because when you talk about putting a better bumper on the car you have to consider how you connect it with the frame and that may mean modifying the frame.

Actually in the DOT standard, they have a two and a half mile-an-hour rear capability, but in fact the bumper is not connected to the frame on some cars. It is just connected to the skin of the car. So to get beyond two and a half miles an hour in the rear they will probably have to connect the bumper to the frame, which we think would be a good idea.

Now, since regulation of bumpers inevitably leads to the regulation of the basic structure of the car, we feel there is no way you can design a car on a State-by-State basis. It has to be one car, and basically designed to be sold in all States.

Now, when you get to something like headlight requirements, you might be able to vary them from one State to another. The basic structure of the car, it is just by its nature has to be regulated we think one place, nationally.

No. 2, it requires an agency with a great deal of expertise, a great deal of resources, engineering know-how.

This is an expensive proposition and it probably exceeds the capability of any one State to do the right kind of job and match themselves with the expertise that exists in Detroit.

No. 3, the Federal Government has substantially occupied this field. DOT is regulating the safety characteristics of the cars. It would not make much sense to say DOT should regulate the safety characteristics, and the other characteristics should be regulated on a State-by-State basis, because the two might be in conflict and throw the manufacturers into a dilemma.

No. 4, the States have never regulated in this area, I mean really regulated the design of a car.

So for all of these reasons, we think it is just common sense to do it this way. We think we could take the same arguments and say, conversely, why we support State regulation of insurance. It has been at the State level, many people find fault with certain things that have been done, but it has been regulated there, we think quite effectively. We have never hesitated to criticize the States when they don't perform their functions properly.

But we do not think for example that insurance is something which has to be regulated nationally. Now, people have different views as to whether it would be better regulated nationally or locally. But it

isn't by its nature something that necessitates national regulation in our opinion.

Mr. SUTOLIFFE. Thank you very much.

If we have further questions, perhaps we could submit them.<sup>1</sup>

Mr. MERTZ. We would be very glad to answer them.

Senator HART. In thanking you, let me indicate that prior to the recess we estimated we would conclude by 5 o'clock and I know that Mr. Lemmon was perfectly willing to stay, but I realized also that we have airplane trouble on Friday night getting out of here, and I indicated to him we would place his statement in the record in full.

Incidentally, I should underscore the fact that he recommends or describes S. 945 and S. 946 as unnecessary and unwarranted, and we ought not to give them favorable consideration. We will put that statement in the record in full.

As I indicated to him, such questions as remain, which we think appropriate to ask him, we will write him and he can respond in writing.

And if there are additional questions of either of the two other witnesses, Mr. Mertz or Dr. Miller, we will do the same.

Thank you very much, gentlemen, for your patience.

Mr. MERTZ. Thank you for your patience, Senator, we appreciate it.

(The statements follow:)

#### STATEMENT OF VESTAL LEMMON, PRESIDENT,

#### NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

We appreciate the opportunity to appear before this Committee and testify concerning S-945, S-946 and SCR-23.

NAII is a voluntary national trade association of some 533 insurers<sup>2</sup> of all types, both stock and non-stock, whose membership provides a representative cross-section of the casualty and fire insurance business in America. Our companies range in size from the smallest one-state entrepreneurs to the very largest national writers; they reflect all forms of merchandising—-independent agency, exclusive agency, and direct writer; and they include companies serving a general market and those specializing in serving particular consumer groups such as farmers, teachers, government employees, military personnel, and truckers.

The independent companies have long been recognized as the most competitive and progressive segment of the fire-casualty insurance business. They have originated by far most of the many policy coverage innovations and improvements in the past 25 years. Their aggressive price competition has saved the insuring public more than \$10 billion in premiums in the last decade alone. Our companies have continued to expand the voluntary market availability of automobile insurance at a rate faster than the rate of increase in new vehicle registration, so that currently they are serving more than half the insured motorists in this country.

Our basic position on S-945 can be summed up as follows:

(1) We recognize that certain problems exist in the present system of dealing with the financial consequences of automobile accidents:

(2) Great progress has been made in recent years under this system in expanding insurance protection, through such innovations as automobile medical payments coverage (now carried by 85% of our policyholders), uninsured motorist coverage (carried by some 90% of our policyholders), and the advance payment technique in liability cases;

(3) The remaining problems can be alleviated at the state level by reasonable reform measures which further broaden the scope of protection and streamline the system while retaining its fundamental concept of personal accountability and vital rights of recovery;

<sup>1</sup> See p. 1187 for questions and answers.

<sup>2</sup> 354 members and 179 subscribers to our statistical services.

(4) Imposition of a federal no-fault system governing the automobile accident reparations problem is not necessary and would be contrary to the long-range public interest;

(5) We therefore respectfully urge that S-945 be not favorably considered by this Committee and the Congress.

#### SCOPE AND COMPLEXITY OF THE PROBLEM

Our Association welcomed the comprehensive DOT investigation of the automobile accident injury reparations system and we so testified during the hearings of your Committee in 1968 on the legislation authorizing that investigation. We recognized that an exploding vehicular population and spiraling medical and disability costs were imposing tremendous new strains on the liability system and the insurance system serving it. We noted that the system has been in a continual state of evolution since its origin, and anticipated that the DOT study might well point up the need for further improvements.

The results of that study, to which our companies and Association contributed a number of valuable inputs, suggests the following as the major areas of concern by DOT:

- More widespread compensation of basic economic losses;
- Meeting the special problem of the catastrophic loss;
- Improved speed and efficiency;
- Better distribution of loss dollars by size of claim;
- Encouragement of rehabilitation;
- Reducing court congestion.

NAII is dedicated to improvement of the system in all these areas, and is actively promoting state legislation aimed at that goal. Our proposals for reform are embodied in our Dual Protection Plan.

Dual Protection calls for inclusion in all private passenger liability policies of at least \$8,000 of medical/disability coverage per person per accident (\$2,000 medical/hospital/funeral; \$6,000 income loss; \$4,500 for loss of essential services by non-wage-earners<sup>1</sup>) payable regardless of fault, to the insured and family, guest passengers and pedestrians. Every insurer would also be required to offer optional catastrophe economic loss coverage to the insured and family to take over if and when the basic limits coverage just described is exhausted, and pay medical/disability benefits (regardless of fault) up to a limit of at least \$100,000 per person per accident.

Losses paid by the first-party insurer could be shifted to an at-fault third person or his insurer, thus preserving the important principle that those who present the greatest hazard to others should carry the largest share of the total loss.

Among its cost-reducing features the Plan (1) prevents duplicative recovery of economic losses under both the first-party coverage and the tort liability system; (2) requires recognition in wage loss awards of the fact that no income tax is payable, and (3) prescribes prima facie standards for determining tort damage awards for pain and suffering in the less serious liability cases. The Plan also calls for mandatory arbitration of small claims, and for certain other steps to streamline and improve the system. We are furnishing more details concerning Dual Protection for this Committee's information.

Our program constitutes a major response to the criticisms highlighted by DOT and this Committee. Well over 90% of the medical/disability losses suffered in auto accidents fall below the minimum limits of basic economic loss automatically included in each policy under our Plan. Thus, the vast majority of accident victims will get instant payment of basic economic losses regardless of fault and without necessity of litigation. Those motorists and motoring families needing and desiring the optional catastrophe coverage of at least \$100,000 per person would also be assured of it, and the premium cost involved would be nominal.

While our Plan will thereby deliver much broader benefits to more people more quickly—and with a substantial improvement in the operating efficiency of the system—it also preserves the vital principle of personal accountability for negligence, the equitable rule of loss-bearing based on fault, and the important right to recover tort damages for pain and suffering—subject only to prima facie standards in smaller cases. Costwise, the basic features of our program are intended to stabilize or reduce the premiums for the average motorist.

<sup>1</sup> Income loss coverage subject to a minimum limit of 85% of lost earnings or \$750 per month; non-wage-earner coverage subject to a minimum limit of \$12 per day.

As indicated by Secretary Volpe in his report and testimony to the Congress, the DOT study has pointed up the wisdom of exercising caution in deciding exactly what steps should be taken in the way of reform measures.

Even the massive data and findings piled up by DOT do not lead automatically to "easy solutions" of the auto accident compensation problem, according to Mr. Volpe.

"Much legitimate uncertainty" exists as to "how far and how fast the public wants or is willing to go in changing the reparations system".

The price and cost implications of any major change in the system are "unknown and essentially unknowable".

The complexity of the problem, and the existence of honest disagreement among informed people as to what remedial measures are best, point to the wisdom of healthy experimentation and change at the state level, rather than federal action abruptly over-turning the whole auto reparations system nationally.

We strongly concur with Secretary Volpe's admonitions on those points.

#### BASIC OBJECTIONS TO S-945

We submit that adoption by the Congress of S-945 would constitute a form of "over-kill" of problems which are capable of adequate solution at the state level within the framework of the present system.

The existing fault liability system governing auto accidents and most other forms of accidents rests on several basic principles that developed out of many centuries of hard-won experience by society. One is the principle of personal accountability—the duty of each citizen to use reasonable care not to injure his fellow man, and if he does wrongfully injure him, the responsibility to respond in damages. Liability insurance was created as a means of enabling a person to better meet that responsibility if it arises.

We ask: Has this long-recognized principle of human behavior now become unsound, or outdated, as applied to auto accidents? If so, upon what basis?

The only arguments we have ever heard advanced for abolition of this vital principle are based purely on expediency—the supposed need to eliminate at all cost the expense and the time factor involved in administration and enforcement of the principle.

We know this Committee will examine carefully the grave propensities of Congressional action abolishing this principle, as proposed in S-945. We believe it would constitute a serious blow to driver safety motivation and to traffic law enforcement for this Congress to enact measures which embody the principle that henceforth, except where they commit "catastrophic harm" some 100,000,000 American motorists are to be freed of all personal accountability to their injury victims for negligence on the streets and highways.

Such a move could easily be interpreted by the public as a declaration that it no longer really matters who is at fault in the great mass of auto accidents. If so, it could well lead to a deterioration of driver attitudes and weakening of police enforcement efforts, and to a tragic increase in deaths, injuries and property damage.<sup>1</sup>

<sup>1</sup> In "Automobile Accident Costs and Payments: Studies In The Economics Of Injury Reparations" (U. of Michigan Press, 1964) the report of the comprehensive study of automobile accidents in Michigan, at pp. 91-92, the value of the fault system in aiding in the traffic law enforcement function is recognized. It is there pointed out that: "Therefore, an innocent party to an accident has a private incentive to supply police with any information which would tend to throw fault upon other parties. In the absence of the tort claim incentive, many motorists might think it more sporting to have no memory of fault-implying aspects of the accident."

That report goes on to state the following conclusion:

"From these considerations, it appears that tort law probably furnishes important incentives to avoid involvement in accidents involving injury to others, and to avoid conduct which will be charged as negligent, even if it does not unfailingly punish the guilty and limit its reward to the completely innocent."

"None of the other reparations systems appears to furnish an equal incentive in this direction. Workmen's compensation doubtless furnishes an incentive to employers to minimize injuries to their own employees, but their incentive to minimize injuries to others by their employees must reside elsewhere. As for life insurance, social security, and public assistance, the effect of injuring another on one's own taxes or insurance premiums is infinitesimal."

"Therefore, any proposal to eliminate the tort remedy from any area of accidents would call for a close examination into the sufficiency of the other incentives to injury avoidance. At the same time, it cannot be said that minor changes in the tort pattern, by increasing or decreasing the damages, or by relaxing or tightening the negligence standards, are likely to affect significantly the pressure which the ordinary citizen presently feels to avoid injuring others."

These consequences would be most unfortunate, especially since extreme measures such as this are not in our opinion necessary. Those criticisms of the present system which have substance can be alleviated by state legislation which greatly increase the coverage, speed and efficiency of the system while preserving the vital concept of personal accountability.

#### PAIN AND SUFFERING

A second major respect in which S-945 constitutes an "over-kill" of the problem is its proposed abolition of all right of recovery of pain, suffering and other general damages except where "catastrophic harm" has been inflicted.

Congressional action sweeping away this vital right of the American public would fly squarely in the face of what several reliable indicators show to be the wishes of most of the people. A substantial majority if the public when fairly polled on the subject have stated that they are not willing to give up their right of recovery for pain and suffering *even if it would reduce insurance costs*.<sup>1</sup> This being so, even a larger majority in our opinion would oppose the loss of that right under a program like S-945, which we believe can only increase insurance costs.

#### PRIMACY OF AUTO INSURANCE COVERAGE

Another highly important public policy concept which S-945 would abrogate is the principle that *motoring should pay its way* in our society. With minor exceptions the bill would make the prescribed auto insurance no-fault coverage secondary to all other sources of medical and wage loss benefits. The injured party could not collect a penny from his auto insurance until and unless he had exhausted every bit of available benefits from employer sick leave and wage continuation plans, union benefit funds, Blue Cross, Blue Shield, group and individual accident and health coverages, Medicare and/or other social insurance programs. Auto insurance would be permitted to be primary only if one of those other plans, coverages or programs expressly chose to make it primary—a conjectural possibility, to say the least.

Making the auto coverage excess over collateral sources would create a host of vexing practical problems including difficulties in ascertaining collateral benefits in connection with rating and with claim investigation, with resulting delay and confusion. Most important of all, though, there are basic public policy reasons why the auto insurance system should be the primary source of recovery for automobile-inflicted injuries, as recommended by Secretary Volpe in his report and testimony to the Congress.

Motoring serves a utilitarian function or a pleasure-producing function, or both, for those who engage in it. But it likewise saddles serious hazards and burdens on our society in the form of deaths, injuries, noise, traffic congestion, air pollution, consumption of natural resources, and so on.

Sound public policy dictates that to the fullest extent possible those who engage in an inherently dangerous or socially burdensome pursuit should bear the full costs of that pursuit—including the costs of all attendant safeguards and measures necessary to minimize or underwrite the damage it inflicts on others. It would be unfair and unwise to shift the costs away from those who engage in the pursuit and thereby subsidize it.

Thus, there is absolutely no justification for shifting a substantial part of the cost of auto accidents away from the activity of motoring and burying it in the cost of non-auto insurance systems, or employer wage continuation programs, or social insurance programs like Medicare. It would be no more justifiable than to relieve industrial polluters of the responsibility for installing adequate pollution control devices, and forcing the general public to pay the entire costs of protecting themselves from the consequences of that pollution.

Keeping the full costs of a hazardous, burden-producing pursuit like motoring squarely on the shoulders of those participating in it also provides at least one form of disincentive against unreasonable *over-use*. Gross over-use by some citizens of the automobile already creates serious problems in America—such as the worsening congestion of our inner cities and arterial highways by the glut

<sup>1</sup> In the 1970 national survey by Market Facts, Inc., of a large, representative cross-section of the public—the *only* survey which has determined both the attitude *and* the *understanding* of the interviewees concerning the concept of tort damages for pain and suffering—a resounding 70% of those expressing an opinion were opposed to the idea of eliminating recoveries for pain and suffering, *even if it reduced the cost of automobile insurance*. In the massive Michigan Law School survey of auto accident victims noted at footnote 1, some 76% of those interviewed believed tort recoveries should include damages for pain and suffering.

of commuter-driven cars which could and should be replaced by mass transportation. To shift a major portion of auto accident losses from auto insurance to outside benefit sources, as S-945 would do, is a step in the wrong direction which would tend to compound both the traffic congestion problem and the safety problem. We are certain that Secretary Volpe, who has major responsibilities in both the mass transportation and safety areas, had these considerations in mind when he gave support to the principle of primacy of auto insurance in any auto reparations reform programs developed.

#### FAIR ALLOCATION OF THE LOSS BURDEN WITHIN THE AUTO REPARATIONS SYSTEM

A closely related question is that of how the total loss burden within the auto reparations system should be distributed among the different classes of insureds and types of vehicles. One of the virtues of the present system is that, basically, those who present the greatest sources of hazard to others end up carrying the largest share of the total losses. We strongly believe this principle should be preserved.

Here again we find S-945 reversing long-standing rules, and decreeing that what has always been considered right is now wrong and what was wrong is now right. The innocent victim must insure himself against the losses negligently inflicted on him by the wrongdoer, and bear most of the additional insurance cost of that peril.

One area where this question is highlighted under S-945 is its attempt to deal with the fact that commercial and public vehicles as a group present a greater third party liability hazard than private passenger vehicles.

S-945 tries to handle the problem by creating a concept of "larger than ordinary" vehicles and a formula approach by which DOT would assign to those vehicles a percentage of the net economic losses sustained by occupants of other vehicles. This would mean that in individual cases large vehicles—which could include vehicles ranging in size from privately owned campers to double bottom trucks—would be paying part of the losses of others in accidents which were in no way the fault of the driver of the larger vehicle.

In short, this bill like all drastic no-fault measures will thrust loss burdens onto the shoulders of people who don't deserve to bear them. Once you depart from the principle that loss burdens should follow the pathways of fault, you do gross injustice to one group or another.

And once you start down that wrong road, how can you justify stopping with auto accidents? If the extrahazardous categories of motorists are now to be largely freed of their responsibility to their victims and the victims must bear that loss burden, consistency would dictate that surgeons be immunized from liability for negligence in the operating room, and that manufacturers of foods, drugs, automobiles and all other products be immunized from liability for defects causing harm to the consuming public.

Carried to its ultimate conclusion, this philosophy of no responsibility would require freeing industrial polluters of all responsibility to stop polluting, and "solve" that problem by forcing every citizen to buy himself a gas mask.

#### STATE, NOT FEDERAL, ACTION INDICATED

The final major objection—and perhaps the most basic—which we wish to interpose to S-945 is that adoption of a Federal auto accident reparations program is unnecessary and unwarranted, and would be contrary to the long-range interests of the American public. The proper situs for remedial action is at the state level.

Not only would this bill strip the states of jurisdiction over the whole field of law governing the rights and responsibilities of the public in motor vehicle accidents, but it would move the seat of regulation of our business from the state capitals to Washington, D.C.

As one example of the kind of "regulation" S-945 contemplates, it will force every auto insurer to accept and insure for life virtually any motorist who walks in the door, regardless of driving record and potential hazard. In reviewing applications, insurers will no longer be able to consider factors such as fraud, misrepresentation, illegal enterprises and activities, habitual drunkenness or dope addiction, or a long-standing record of accidents and convictions. A company apparently will just have to keep issuing lifetime policies to more and more applicants until and unless it can prove to a regulator that it is on

the verge of insolvency—which then may well be too late to take preventive action.

This provision—so consumer-oriented at first glance but so serious in its implications—is an example of what can result from precipitate attempts to “cure” the intricate problems of insurance regulation or of auto accident reparations nationally with one stroke of a pen. It can do irreparable damage to a whole industry, and backfire against the long-range public interest as well.

It is perfectly true that mistakes sometimes occur in state legislatures, too. But when that happens it has a relatively limited geographical impact on the public and on the insurance business before it is corrected.

A complete, instantaneous upheaval of the existing reparations systems of 50 states as proposed in S-945 is an entirely different matter. Radical country-wide experimentation of this kind would be at best a dangerous gamble with the public interest—and all the worse because it is an *unnecessary* gamble.

There are some institutions and fields of activity or enterprise which by their very nature must be regulated nationally. But the legal system governing the rights and responsibilities of persons involved in auto accidents is not one of them. Nor is the insurance operation serving that system.

No case has been made for Federal usurpation of this field.

It has been suggested that this step is necessary because motoring sometimes involves interstate travel.

If this reasoning were sound—and we submit that it is not—consistency would require that it be applied to scores of other activities, institutions and fields which have every bit as much of an interstate flavor or impact as motoring:

It would follow that because the graduates of local schools scatter to the four corners of the country to pursue a career the entire educational system of this country should be federalized.

It would follow that because citizens traveling from one state to another are subject to varying local criminal laws, the Congress should forthwith replace all those statutes with a rigid federal code.

It would likewise follow that the Congress should take over and rigidly control under a federal master plan virtually every other local institution, business transaction, legal right of action, pursuit and activity one could name, because *all* have interstate aspects or impact.

Another allegation made in support of federal action is that the states cannot be depended upon to respond promptly and adequately to meet public needs and wants. We've heard this suggestion many, many times before—in fact, it has accompanied every bid for federal invasion of state jurisdiction since this nation's founding. If it had prevailed, all state and local government would long ago have been swallowed up, and the daily lives of every citizen would be regulated, lock, stock and barrel, from Washington.

The members of the state legislatures, are after all, elected by the same people who elect the members of this Congress. I'm sure they would insist, with justification, that they are every bit as close and well attuned to the needs and wishes of their constituency.

The record will show that once a need for change has been clearly manifested and opposing viewpoints fairly presented and debated, the state legislatures are quite capable of moving forward with sound, progressive measures.

Look at the record of the states in enacting legislation promoting universal availability of uninsured motorist coverage.

Look at the record of the states in broadening coverages and liberalizing eligibility requirements for those in the assigned risk plans.

Look at the record of the states in closing the gap on the insolvency problem.

Look at the record of the states in the passage of competitive rating laws.

Look at the record of the states in enacting laws and regulations governing cancellations. As of this date, some 41 states have taken such action.

Where the auto reparations system is concerned, we would point out that various proposals for reform—including our Dual Protection Plan—were introduced in a majority of states this year. To suggest, as have some advocates of federal action, that because those states have not taken decisive action as of today they are “foot-dragging”, seems to be an unfair and unjust accusation. After all, the U.S. Department of Transportation, under the direction of this Congress, has been engaged in a massive two-year, \$2,000,000 study of the problem, the final report of which was not made public until a scant seven weeks ago.

One might ask: What was expected of the states—to jump the gun and revolutionize their liability systems by guessing at the unseen final findings and recommendations of DOT? And had the 50 states acted precipitately—or even if they now act precipitately—without carefully weighing the final DOT report, would not that \$2,000,000 study have been a waste of time and money?

As acknowledged in the DOT report itself, there are many pivotal aspects of this problem which remain highly controversial if not imponderable.

The most basic is: How far and how fast does the public really want to go toward no-fault? The DOT itself, even after making its public attitude surveys, isn't certain. Other surveys, too, show that while the public obviously would welcome lower premiums, a majority also wants the party at fault to be held accountable, and they don't want to give up damages for pain and suffering, either.

How can we find the best measures for reconciling the many different public desires in this area—some of which seem rather inconsistent? Isn't the safest, most sensible approach to do as Secretary Volpe has urged—to go to the state level where the existing reparations systems operate—close to the problem and close to the people—to test our measures which seek a proper balance between the fault and no-fault concepts—and thereby to evolve on an orderly basis a system of sound, up-to-date state laws?

We submit that this is the best, and, in fact the only reasonable approach to so complex a problem.

One form of healthy experimentation is already going on in a majority of states, and it is our companies who are providing the leadership. An increasing number of companies are automatically including quick-pay protection covering basic medical expenses and wage loss with all their auto liability policies. Public reception of this voluntarily-expanded coverage has been excellent.

As an extension of this experimentation, NAII is actively promoting Dual Protection, calling for state legislative reform which strikes a reasonable balance between the many proposed solutions to this problem. We have already described the major features of that program, including the fact that it is designed to stabilize or reduce bodily injury insurance premiums.

Of course, the major opportunity for effecting auto insurance premium savings lies on the property loss side of the picture, where most of the money is now being expended. NAII and its companies have been devoting a great deal of effort and resources in research into the underlying causes of the spiral in collision and property damage losses and means of reversing that spiral. This subject is fully treated in our testimony on S-976, The Motor Vehicle Information and Cost Savings Act.

We have seen nothing to evidence a hue and cry by the public at large for adopting a compulsory federal no-fault program. In our opinion, the public *does* want improvement of the auto accident reparations process, but not at the price of sacrificing what is worthwhile in the existing system. The safest and surest way to determine precisely *what* form of reparations system best satisfies most people's needs is to do what has been done with success on so many occasions in the past—to use several states as laboratories to test out in the crucible of real-world experience some of the reasonable reform concepts being advanced. Our Association is committed to this approach, and we intend to work for timely action by the states to this end.

#### POSITION ON S-946

Just as we believe the states should be left with the task of improving the automobile accident reparations system, the NAII holds that implementation of group automobile insurance plans is a matter for individual state determination. We see no justifiable need for Federal interventions in this area, and thus we must oppose S-946.

The state regulatory climate already allows for innovative activity in this area. Half the states are experimenting by having approved several forms of group programs. In addition, six states in current legislative sessions have introduced bills authorizing such programs, and a number of other states have indicated no opposition, provided the programs comply with their respective state laws.

It is noteworthy, perhaps, that states which have approved programs of group auto insurance have nevertheless continued the retention of fictitious group laws or other laws designed to prevent the formation of fictitious groups for purposes of insurance. Through various tools at their disposal (e.g., rating laws, unfair trade practices acts, examination laws and other measures), the states are in

an eminently better position to determine whether groups of individuals are entitled to special insurance treatment.

Each state is familiar with its own problems in the areas of marketing availability of insurance, protection against unfair discrimination, the tailoring of programs to best meet the needs of the public at the local level, etc.

The states, moreover, are much better geared to see that the insurance market is not controlled by plans under which the giant companies could well run the smaller insurers out of business.

#### CONCLUSION

In view of the foregoing, we respectfully submit that S-945 and S-946 are unnecessary and unwarranted, and should not be favorably considered by the Congress.

We believe it would be against the long-range public interest for the Congress to take specific action either in the area of auto accident reparations or in the field of group automobile insurance merchandising.

Should the Congress elect to act, we urge that it not go beyond the broad approach embodied in SCR-23.

#### STATEMENT OF ARTHUR C. MERTZ, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

We appreciate the opportunity to appear before this Committee today and testify concerning S-976, the Motor Vehicle Information and Cost Savings Act.

I am Arthur C. Mertz, Vice President and General Counsel of the National Association of Independent Insurers, a voluntary trade Association of 533 companies<sup>1</sup> of all sizes and types—stock and non-stock—which serve more than half the insured motorists in America. With me today is Dr. Patrick Miller of Cornell Aeronautical Laboratories, Inc., who will report on the status of research being conducted by CAL on our behalf which is pertinent to the legislation before you.

We appear today to give our support to S-976 in its basic objectives and provisions. Subject only to certain limited qualifications and affirmative suggestions which I shall note in the course of this statement, we endorse these major features of the bill:

Clarification and broadening of DOT's authority to include promulgation of property loss reduction standards, including bumper standards.

Establishment of tests and procedures to produce comparative damage-ability data on production models of new cars, and furnishing of that data to DOT for dissemination to the public and the insurance business.

Determination by DOT of feasibility of similar procedure relative to vehicle safety testing and data reporting.

Broadening of DOT standards for state vehicle registration laws to include title provisions.

Establishment of further incentives for states to adopt and implement periodic vehicle inspection laws.

In regard to the provisions of S-976 which call for expansion of the state vehicle inspection systems to cover certain post-crash situations, we support the underlying safety objectives, but urge further research and experimentation before determining whether these should become part of the mandatory standards.

Our general endorsement of S-976 arises out of our profound concern over the rapid upsurge in auto material damage losses, which must be borne by the consumer in the form of higher insurance premiums. S-976, in calling for vehicle design and bumper improvements to minimize damage, should help make possible the ultimate stabilization or reduction of auto material damage insurance rates. As will be pointed out, NAIH as an advisory organization is working diligently to develop means of evaluating the impact better bumpers and other design improvements will have on losses, so as to aid our companies in giving appropriate rate recognition to those improvements.

#### THE PROPERTY DAMAGE SPIRAL AND FACTORS UNDERLYING IT

As a backdrop to my comments on the specific provisions of S-976, it might be helpful to refer briefly to the worsening underwriting picture on automobile material damage coverages, and some of the factors behind it.

<sup>1</sup> 354 members and 179 statistical subscribers.

During the decade 1959-1969, the average property damage<sup>1</sup> loss incurred by all our companies on private passenger autos increased about 100%. In other words, the severity of property damage loss involved in the typical, everyday automobile crash, as measured by the size of the average PD claim, about doubled.

What is even more disturbing is the fact that the annual *rate* of increase in average loss severity has been rapidly accelerating: Of that aggregate 100% increase between 1959-1969, only 29% occurred in the first half of the decade (1959-1964) while 71% of it occurred in the latter half (1964-1969). Thus, the rate of increase more than doubled in the past 5 years. We believe these alarming trends in our companies' average losses are a fairly reliable indicator of trends for the whole industry.

Although premium levels have been raised from time to time, the loss spiral has outstripped them. This is evidenced by the fact that loss ratios—the ratios that losses incurred bear to premiums earned—have risen substantially during the same 10-year period.

Between 1959 and 1969, the average loss ratio on PD for all stock companies, reported in Best's Aggregates and Averages rose from 65.6 to 81.8—up almost 25%. Their average loss ratio on collision went from 60.2 to 75.9—up almost 26%. Notwithstanding more than a 10% reduction in the expense ratio for those lines during the same 10-year period, their combined losses and expenses in 1969 produced an 11.0% underwriting loss on PD and a 4.7% loss on collision coverage.

Meanwhile, all mutuals reported in Best's saw their average PD loss ratio go from 70.6 to 90.2—up almost 28%—and their collision loss ratio go from 57.8 to 87.6—up almost 52%. In spite of substantial reductions in their expense ratios (7% reduction for PD, and 8% for collision) during the same 10-year period, they suffered a 13.6% underwriting loss on PD and a 10.9% underwriting loss on collision in 1969.

Translating into dollars these percentage underwriting loss figures for 1969, we find that stock and mutual companies combined lost over \$450,000,000 on auto property damage and collision coverages in that year. Adding the results from automobile, fire, theft and comprehensive insurance produced over *half a billion dollars* in aggregate losses on the auto material damage coverages. This compares with about a \$150,000,000 loss on auto bodily injury liability coverage.

It is obvious which side of the auto insurance package now represents the major Achilles heel of our business, costwise. While total earned premium volume for material damage in 1969 was only about 20% greater than the premium volume for bodily injury, those material damage premiums produced well over *three times* the amount of losses!

What cost ingredients account for these staggering losses?

A year and a half ago, in testifying at the Senate Antitrust and Monopoly Subcommittee's hearings on the auto repair problem, we identified four major factors underlying the auto material damage spiral:

Speed, horsepower and "high performance" cars;

Increases in repair garage charges;

The spiral in automobile prices and prices of crash repair parts;

The extreme vulnerability of today's automobiles to costly damage even in low-speed accidents.

There has been some improvement in the first area since 1969. Largely because of the leadership shown by one of our member companies late in that year in instituting substantial but statistically-justified surcharges on "muscle" cars—followed by other companies—the harrowing horsepower race of two years ago was aborted, permanently, we hope. A valuable lesson learned from this experience was its demonstration of how effective the insurance rating mechanism can be in providing a disincentive for the design, promotion and use of vehicles proven to constitute an extraordinary hazard to the public.

#### REPAIRSHOP LABOR RATES

Repair garage charges for labor have continued to rise, as evidenced by Enclosure 1. In the decade 1960 to 1970 the average hourly rates in the 13 large cities covered by this exhibit increased about 90%. Of the greatest significance

<sup>1</sup> Property damage rather than collision coverage losses are used because the PD figures are in no way influenced by presence or absence of deductibles or by changes in the percentage of policies containing deductibles. However, average collision losses also increased greatly during the same decade, and the rate of increase accelerated in the last 5 years of that decade.

is the fact that 65% of that overall increase occurred in the latter half of the decade and only 25% in the first half.

#### PRICES FOR NEW CARS AND REPLACEMENTS PARTS

In our October 1969 testimony we showed that between 1965 and mid-1969, the new car list price on a Plymouth Fury increased 11% and that of a Chevrolet Impala and a Ford Galaxie rose 10%. Meanwhile, the list prices on the eight major components most commonly replaced in collision repairs rose 20%, 22½% and 36½%, respectively—two to 3½ times as fast as the new car prices. This disparity had special significance to our business because about 85% of our property damage/collision claim dollars go for *repairing* vehicles and only 15% in payment of "total losses".

Enclosure 2 brings those price trends forward from mid-1969 to April 1971. You will observe that during the past year and a half, the increases in list prices for these new cars and for their major crash replacement components bear a much closer relationship to each other than before. This tends toward a more consistent pricing pattern, but we now find that the prices both for new cars and for crash parts—each a major cost ingredient of our material damage insurance losses—are increasing at an accelerating rate.

Not only have the manufacturers' list prices for parts been climbing rapidly, but the *effective* prices for those parts at the repairshop level have been going up even faster, due to the decline of real parts price competition at that level. The widespread disappearance of repairship discounts on crash parts in recent years was disclosed by NAII in our Senate testimony in 1969, supplemented further by testimony of one of our members.

These revelations, we believe, played an important part in bringing about the pending Federal Trade Commission investigation into the whole crash-parts distribution and pricing system in America. We and our companies have been cooperating in that investigation, and earnestly hope that it will lead to remedial steps opening up the parts distribution system to effective competition and improved cost efficiency. Here, we believe, lies a fertile area for great potential savings to the consuming public.

In the meantime, the staff of our Association is maintaining a continued watchfulness over auto crash parts price trends. We feel we owe a duty to the policy-holding public to do so. Our watchdogging in this area recently proved beneficial when we noted and brought about the correction of errors in several published parts manuals substantially overstating the prices of bumper face bars. Considering the vast number of replacement bumpers purchased by our business on behalf of our insureds, the savings to the consumer on this one item should be substantial.

Another avenue we are pursuing is a study of the feasibility of a crash repair research center for advancing the technology and improving the efficiency of the crash repair process in America. Recently, we sent a 4-man team to England and Sweden to examine the crash research facilities there. The favorable report they brought back has encouraged us to pursue this avenue further, and we hope soon to complete a more detailed study into the practicability of such a center in this country. I personally am of the belief that if properly conceived and operated, this sort of facility could prove highly beneficial not only to our business but to the auto manufacturers, the crash repairshops and the consumer as well.

#### IMPROVEMENT OF AUTO DESIGN

The most critical area, costwise, and the one on which we have focused primary attention, is auto design as it affects damageability. This is of course one of the prime subjects dealt with by S-976.

Our 1969 testimony before the Senate investigation of the auto repair problem was accompanied by a listing and analysis of many common design features which made modern-day cars unnecessarily vulnerable to damage and costly to repair. We especially decried the utter lack of functional bumpers, and urged that if the manufacturers would equip cars with bumpers that could withstand everyday, low-speed traffic mishaps, the motoring public would reap immense savings. Subsequently, one of our large companies has announced and widely advertised its offer to give a substantial collision insurance premium discount on cars equipped with bumpers capable of withstanding a specified barrier crash, front and rear, without damage. Other companies have followed suit.

Beginning during the same Senate hearings, our industry's safety arm, the Insurance Institute for Highway Safety, presented filmed reports of its low-

speed crash tests, which dramatized the gravity and costliness of vehicle damage occurring in mere 5 and 10 MPH barrier crashes.

Those 1969 Senate auto repair hearings and the chain of ensuing events—including the issuance last month of DOT's first bumper standards—have signaled a major turning-point in the crusade for safer, saner cars. Damageability considerations generally, and bumper technology in particular, have now been thrust up to the forefront of attention by the auto manufacturers in their design planning. Indications are that the manufacturers are now devoting extensive research efforts to bumper technology and damage minimization, and we are encouraged by these efforts. Equally important, this issue has also been thrust up to the forefront of public attention, which should give encouragement to the manufacturers and to the government that the public is *ready* for safer, more practical car design features.

#### DOT PROPERTY LOSS REDUCTION AND BUMPER STANDARDS UNDER S-976

The initial bumper performance levels set by DOT—and specifically the 2½ MPH rear bumper requirements—have fallen short of what had been anticipated and hoped for. This standard is, as a first step, an improvement over the status quo, but progress certainly should not stop there.

One of the reasons cited by DOT for requiring only a 2½ MPH (barrier) rear bumper capability on 1973 model year automobiles is its conclusion that a 5 MPH capability "would involve extensive structural redesign without a commensurate increase in safety." These initial bumper standards are of course expressly keyed to *safety* considerations, since the Motor Vehicle Safety Act of 1966 does not expressly empower DOT to give weight to vehicle damageability factors. S-976 will close that gap in DOT's jurisdiction. We support such a move.

DOT having been charged with the duty of setting vehicle safety standards, the authority to give weight to damageability factors as well should follow as a natural corollary. An automobile is an integral piece of machinery. While safety considerations must always be paramount, as S-976 properly provides, major design changes should be viewed in the context of damage minimization as well. Both objectives are highly important from a public interest standpoint, and as Dr. Miller will point out, they are not basically incompatible. It is only logical that the same agency that regulates one essential aspect of auto design should regulate the other, as contemplated by S-976.

A subsidiary question presented by S-976 is whether it is desirable to spell out specific minimum bumper performance requirements in the statute itself, as the bill now does in paragraph 125(c) on page 5, or whether to leave such technical specifications for DOT to prescribe. We believe the wiser approach is to avoid statutory specifications and give DOT the responsibility for such determinations. The choice of the *best* bumper or other design standards, under all the circumstances, involves the interplay and balancing of a great number of factors including engineering, statistical and economic considerations. This determination we believe should be the function of an administrative agency like DOT. We would therefore suggest that paragraph 125(c) on page 5 of the bill be deleted and that paragraph 125(b) be broadened to make it clear that property loss reduction standards shall include bumper standards. We also suggest that it be spelled out that the Secretary shall not only "promulgate" but shall periodically revise and update all such standards, to make it clear that the overall objective is timely, progressive improvement of design—as expeditiously as is feasible in the light of the minimum lead times reasonably needed for the manufacturers to effectuate the changes.

#### VEHICLE-TESTING AND INFORMATION-REPORTING UNDER S-976

Section 5 of S-976 provides that by July 1, 1972 DOT shall promulgate procedures under which all manufacturers must test production models of new passenger motor vehicles for comparative susceptibility to damage in collisions at "normal" speeds. The feasibility of similar tests for determining the comparative risks of injuries and death is also to be determined by DOT.

Results of such tests must be reported to DOT. DOT is to make them available to the public and to auto insurance companies, and is ultimately to advise the Congress on the extent to which our industry is utilizing such information in the determination of premium rates.

We support these provisions of Section 127.

There is one provision of the same section, however, whose deletion we respectfully urge. It is paragraph (b) (3) on pages 8 and 9 of the bill, requiring

automobile dealers to provide comparative insurance cost information to prospective car buyers.

This requirement would in our opinion thrust an extremely difficult if not impossible burden and responsibility on auto dealers, most of whom are neither equipped nor qualified to provide such detailed insurance information to the public. It would appear to require them to amass, interpret and keep currently posted on an immense amount of complex, constantly changing rate data. Doing so without being licensed as an agent would also probably be in conflict with the insurance laws of each state.

No such provision as this is really necessary, in our judgment. We can safely assume that those manufacturers and dealers whose cars have a favorable insurance standing will broadcast general information to that effect to the public, without being forced by statute to do so. For details on the comparative rates of the various insurance companies and groups on the many different makes of cars, the car-buyer can and should turn to his agent or insurance company.

Subject to that one suggestion, we endorse section 127 of the bill. More than that, I want to emphasize that NAI as a qualified rate advisory organization is preparing to be of aid in every way possible in enabling its companies to give appropriate premium rate recognition to cars with improved bumpers and other damage-reducing design changes—just as soon as they have credible data on which to base such action.

For some time now we have been studying ways and means of developing the kind of data the companies will need in order to classify and rate cars according to damageability. We recognized at the outset that, if possible, a method should be found to rate the new, improved car models *at the time* they initially enter the marketplace. That, of course, is the time when premium rate variations will have their greatest significance to the buying public.

To this end, after preliminary consultation and exploration with Dr. Thomas Manos, Professor of Engineering at Detroit University, in mid-1970 we commissioned Cornell Aeronautical Laboratories, Inc., to conduct research on our behalf into a subject of inquiry never previously probed: Can the analytical engineering process, or a combination of that process and a minimum amount of crash testing, be a useful and valuable tool for predicting the damageability characteristics of different vehicles and design features?

The encouraging results of that research to date will be described by Dr. Miller of CAL. As we indicated in our original announcement of that project, it is our intention to make its work product available to the auto manufacturers, to DOT, this Committee and other interested legislative and governmental bodies. DOT has already made informal inquiries into the progress of this project. We would hope that when completed, the CAL research will prove of interest and value to DOT in conjunction with the new responsibilities it will be assigned under section 127 of S-976, relative to developing damageability testing procedures for production models of new cars.

It should be noted that use of these tools for advance projections of vehicle damageability characteristics will not obviate the desirability of also collecting appropriate experience data on the various vehicle makes and models once they are out on the highways. The latter will among other things provide a means of verifying and if necessary adjusting the advance projections as experience indicates. This avenue is currently being explored by the major segments of our industry.

#### STATE VEHICLE REGISTRATION, TITLING, AND INSPECTION REQUIREMENTS

Our final comments pertain to those provisions of S-976 dealing with the Federal standards for state vehicle registration and title laws, and for state vehicle inspection programs.

We urge that paragraph (b) of section 501, on pages 15-16, be amended so as to provide that the Secretary of Transportation, in promulgating standards for state registration and uniform certificate of title programs, may consider the Uniform Vehicle Code and Model Traffic Ordinance provisions, but is not bound by them, as the bill now seems to require. We consider the Uniform Code and Model Ordinance to be valuable tools in the field of traffic legislation. Nevertheless, we do not believe as a matter of policy that the work product of any private or semi-private organization should by Federal statute be automatically mandated upon all the states as required legislation. The National Committee on Uniform Traffic Laws and Ordinances is composed of individuals drawn both from governmental agencies and business and professional organizations, including our own Association. While its work product certainly deserves consideration by DOT in connection

with its standards for state vehicle and traffic legislation, it should have only advisory weight and not binding effect.

The remainder of Title V of S-976 would call for the broadening of existing standards for state vehicle inspection programs, and for the adoption of additional incentives to the states for adopting and further implementing such programs.

Let me first reiterate our long-standing support for any and all measures which can effectively operate to increase the level of safety of vehicles on our highways. For many years our Association and its companies have devoted a great deal of time and millions of dollars annually in the traffic and vehicle safety effort, both directly and through affiliated organizations such as the Insurance Institute For Highway Safety which derive major support from us.

As a corollary to this general position, I also want to make it clear that we fully share the desire of this Committee and the sponsors of S-976 to do everything reasonably possible to assure that vehicles sustaining collision damage involving safety-related parts do not go back on the highways in unsafe condition. Indeed, we would be very foolish to take any other position, because every unsafe vehicle on the highway presents not only a personal hazard but a potential insurance hazard.

We therefore wholeheartedly agree with the safety objective involved. The question is: How can that objective best be achieved? By a requirement that all vehicles involved in crashes where safety-related parts may be damaged undergo state-supervised inspection following repairs—proposed in S-976? Or by a requirement instead that the garage or body shop making the repairs certify as to the safety of those repairs? Or by some other means?

We do not know that answer to this question, nor have we found a clear-cut answer in any research study that has come to our attention.

The one study we have seen—the June 1969 Report by Southwest Research Institute—does demonstrate how latent damage to safety related parts can sometimes occur in collisions. It suggests that it would be desirable to have reinspection of vehicles following collision repairs. But it also indicates that to do so would require a more stringent procedure than is now used for periodic vehicle inspection. And, it proposes a certification procedure by repair shops in lieu of inspection where no periodic inspection requirements are in force.

Periodic motor vehicle inspection, although an important and laudable concept, has also proved one of the most complex and difficult in actual implementation. In some of the states that adopted such programs immediately after the Safety Acts of 1966 became operative, complaints and opposition over practical problems encountered have lead to introduction of legislation to repeal the inspection laws. Such repealers have generally been forestalled, but several programs were amended to limit the number of items required to be inspected.

In the light of these practical considerations, we would respectfully suggest that the bill authorize and direct DOT, before taking any action extending the vehicle inspection standard to cover the post-crash problem, to make an immediate and comprehensive study of that whole problem and the best means for alleviating or minimizing any safety-related hazards. This research should include evaluation of results in states that have tried the post-crash inspection procedure, and might also include DOT sponsorship of experimental pilot programs in one or a few states.

In essence, what we are suggesting is that this subject be treated in somewhat the same manner as paragraph (d) of section 125 of the bill treats the subject of testing procedures for manufacturers in determining the injury potential of various passenger vehicle models. The objective of each concept is sound, but in each case more hard facts are perhaps needed about the practical feasibility of various methods of accomplishing the objective, before a standard is decided upon.

#### CONCLUSION

In conclusion, we wish to commend this Committee and the sponsors of S-976 for having identified and highlighted what is by far today's most serious source of spiraling losses and rising auto insurance premiums and for having proposed legislation aimed at that problem. We believe enactment of S-976, with the modifications we have suggested, would serve the interests of the American consuming public. If your Committee should desire any further particulars as to any of the points we have raised, we will be glad to furnish them, and to cooperate in every other way possible.

Dr. Mill is with me, and with the Committee's permission we would now like to present his testimony.

## ENCLOSURE 1

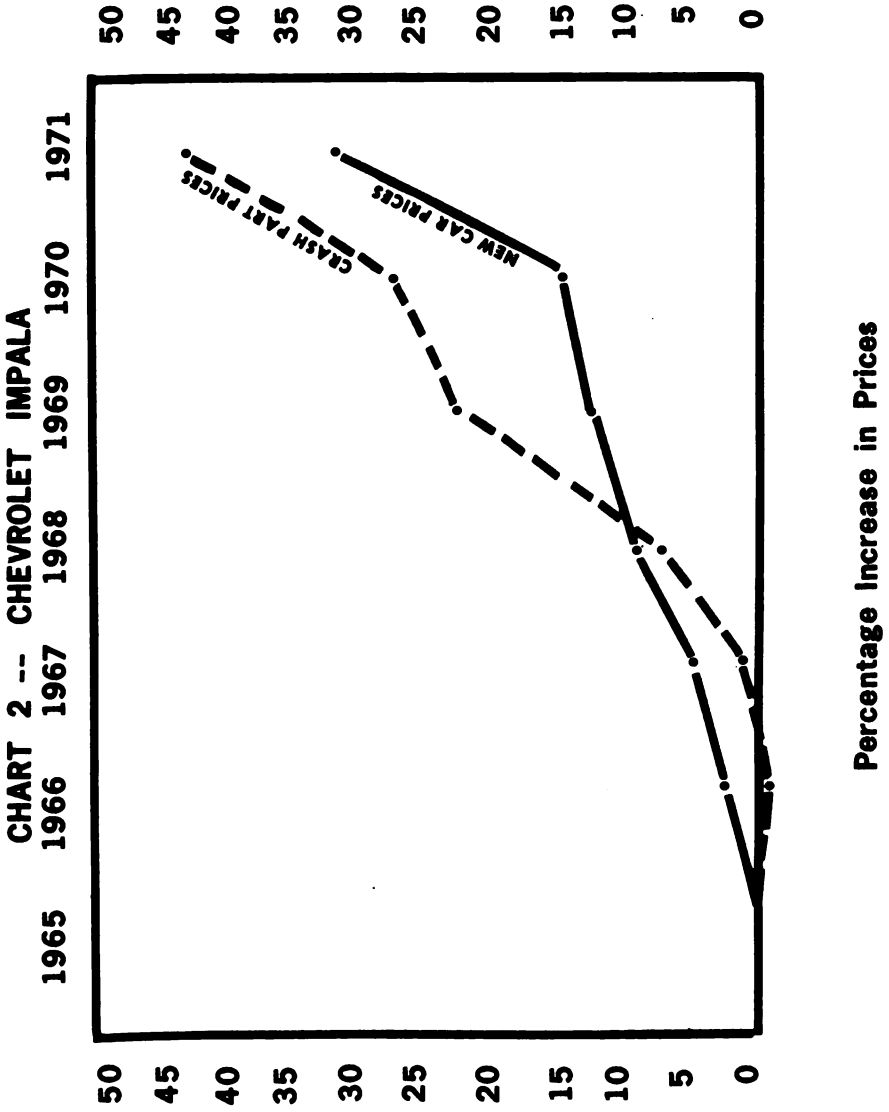
Ranges of Prevailing Hourly Rates for Repairshop Labor

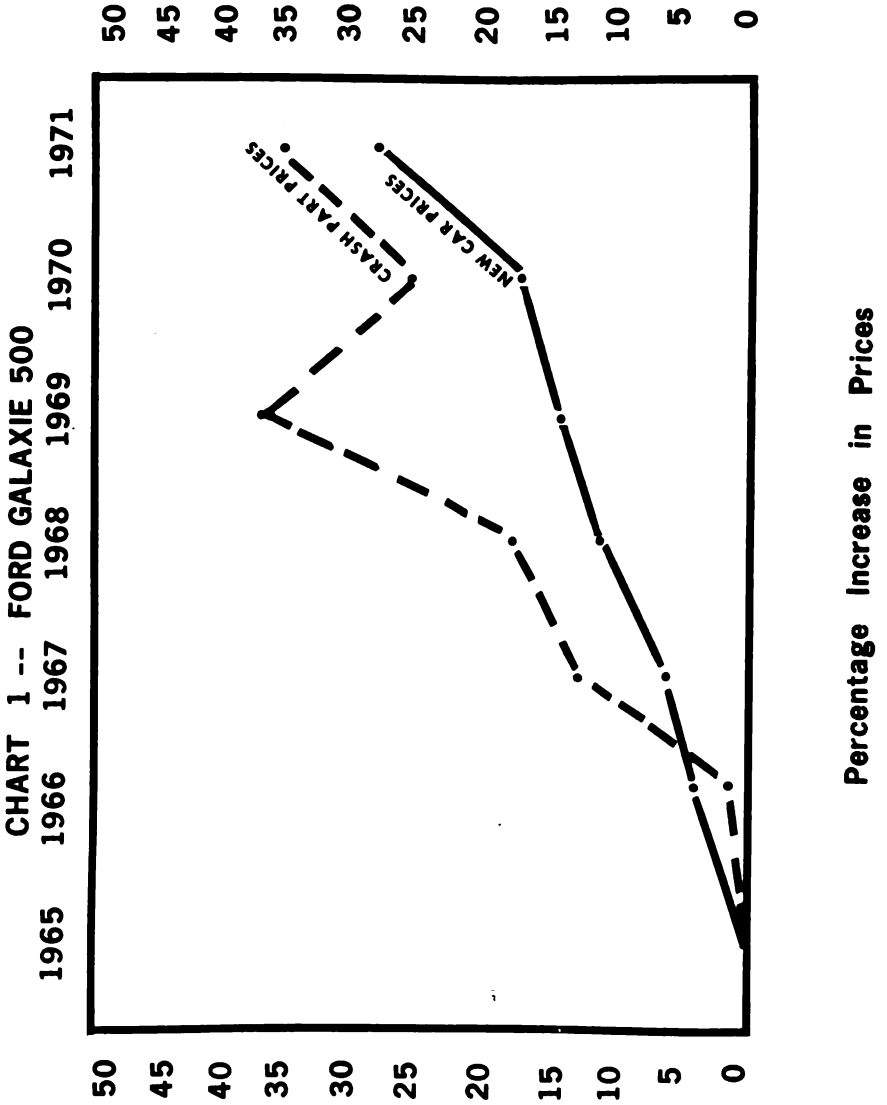
	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
A	\$3.25- 4.20	\$3.50- 4.35	\$3.50- 4.45	\$3.75- 4.50	\$4.00- 4.55	\$4.00- 5.00	\$4.00- 6.00	\$5.00- 6.00	\$6.00- 8.00	\$7.00- 9.00	\$8.50- 10.00
B	4.00- 4.50	4.00- 4.50	4.50- 5.00	4.50- 5.00	5.00- 5.50	5.00- 6.00	5.50- 6.00	6.00- 6.50	6.00- 8.50	7.00- 8.50	7.50- 9.00
C	4.50- 5.00	4.50- 5.00	4.50- 5.50	5.00- 5.50	5.00- 6.00	5.00- 6.00	5.50- 6.50	6.00- 6.50	6.50- 7.00	6.50- 8.00	7.00- 8.00
D	3.50- 5.00	3.50- 5.00	4.00- 5.00	4.00- 5.00	4.50- 5.00	5.00- 6.00	5.50- 6.00	5.50- 6.00	6.00- 7.00	6.50- 8.00	8.00- 9.00
E	3.75- 4.00	3.75- 4.00	4.00- 5.00	4.50- 5.00	4.50- 5.00	5.00- 6.00	5.50- 6.00	6.00- 6.50	6.00- 7.00	6.00- 7.00	6.00- 7.00
F	4.50- 5.00	4.50- 5.00	4.50- 5.00	5.00- 5.50	5.00- 5.50	5.50- 6.00	6.00- 6.50	6.00- 6.50	6.50- 7.00	6.50- 7.00	6.50- 7.50
G	4.50- 5.00	4.50- 5.00	4.75- 5.00	5.00- 5.50	5.00- 5.50	5.50- 6.00	6.00- 6.50	6.50- 7.00	6.50- 7.00	8.00- 11.50	8.50- 11.50
H	4.50- 5.00	4.50- 5.00	5.00- 5.50	5.00- 5.50	5.00- 5.50	5.00- 6.00	6.50- 7.00	7.50- 8.00	8.00- 9.00	12.50- 12.50	8.50- 12.50
I	4.50- 5.00	4.50- 5.00	5.00- 5.50	5.00- 5.50	5.00- 5.50	5.00- 6.00	5.75- 6.00	6.00- 6.50	6.00- 7.00	6.50- 7.50	7.00- 8.50
J	4.50- 5.00	4.50- 5.00	5.00- 5.50	5.00- 5.50	5.00- 5.50	5.50- 6.00	5.50- 6.00	5.50- 6.00	5.50- 6.00	7.50- 9.00	7.50- 10.00
K	4.50- 5.00	4.50- 5.00	4.50- 5.00	4.75- 5.00	4.75- 5.00	5.50- 6.00	5.50- 6.00	6.00- 6.25	6.50- 7.00	6.50- 7.00	7.00- 7.50
L	7.00- 8.50	7.00- 9.00	7.50- 9.50	8.00- 10.00	8.00- 10.50	8.50- 11.00	9.00- 11.50	10.00- 12.00	10.75- 13.00	11.50- 13.00	13.00- 14.00
M	5.00- 6.00	5.00- 6.00	6.00- 6.50	6.00- 6.50	6.00- 7.50	6.00- 8.00	7.00- 8.50	8.00- 9.00	9.50- 10.00	10.00- 12.00	10.00- 14.00

## Letter Code:

A -- New York, New York  
 B -- Washington, D. C.  
 C -- Atlanta, Georgia  
 D -- Miami, Florida  
 E -- New Orleans, Louisiana  
 F -- Kansas City, Missouri  
 G -- Chicago, Illinois

H -- Detroit, Michigan  
 I -- Denver, Colorado  
 J -- Los Angeles, California  
 K -- Dallas, Texas  
 L -- San Francisco, California  
 M -- Seattle, Washington





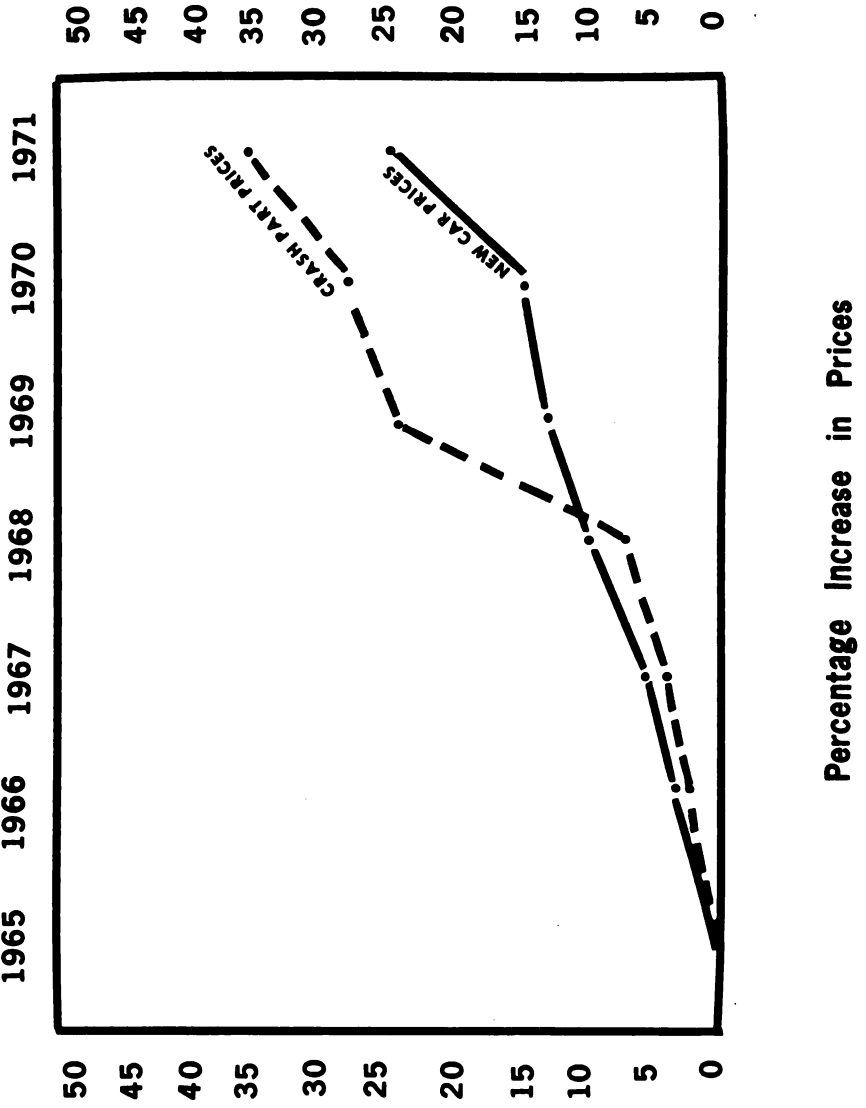
ENCLOSURE 2

**Percentage Increases  
In New Car Prices  
And Prices of Eight Major  
Crash Repair Parts, 1965-1971**

The Eight Crash Parts Are:

Fender	Deck Lid
Hood	Grille Body
Door	Bumper Face Bar
Quarter Panel	Windshield, Clear

CHART 3 -- PLYMOUTH FURY III



STATEMENT OF PATRICK M. MILLER, PH. D., HEAD, STRUCTURAL DYNAMICS SECTION,  
TRANSPORTATION RESEARCH DEPARTMENT, CORNELL AERONAUTICAL LABORATORY,  
INC., BUFFALO, N.Y.

I am here today to present information on the vehicle damage study at Cornell Aeronautical Laboratory that is being sponsored by the National Association of Independent Insurers. In addition, I would like to make some comments concerning the relationship between designing structures for vehicle damage reduction and for passenger safety or protection.

Before proceeding with a discussion on the vehicle damage study, perhaps some background information would be helpful to the Committee. Cornell Aeronautical Laboratory is an independent, non-profit, scientific organization wholly owned by Cornell University. The Laboratory, as an independent research organization, has participated in various scientific investigations. One of the most notable activities has been in the area of automobile research where substantial contributions have been made during the past 20 years. With recent increased emphasis on automobile safety, research in this area has expanded dramatically during the past few years. Indeed, research directed toward providing occupant protection during automobile crashes constitutes the most significant and important efforts within the present automobile research projects. The U.S. Department of Transportation is the major sponsor for these projects which include, for example, studies related to automobile structural crashworthiness, underride guards for heavy vehicles, development and testing of inflatable occupant restraint systems, development of computer models for simulating both the automobile and its occupants during various crash situations, development of an accident reconstruction model, and the investigation and analysis of accidents in the Western New York area.

It was principally the automobile safety research efforts that provided the impetus for our becoming interested in the problem of automobile damage during low speed collisions. From a structural point of view, there is a close relationship between the structural requirements during low speed collisions and the structural performance needed to provide for occupant protection during the higher speed impacts. Indeed, if consideration is given simultaneously to both problems, structural requirements designed to reduce vehicle damage could result in corresponding improvements related to occupant protection.

Dr. William Haddon, President of the Insurance Institute for Highway Safety, recently appeared before this Committee and referred to a statement of mine which essentially indicated that there is no apparent incompatibility between designing vehicle structures for occupant protection, while at the same time, providing for vehicle damage reduction during the low speed collisions. I would like to take this opportunity to reinforce this point but to present the arguments in a slightly different manner.

It is true that approximately 10 percent of the total number of accidents result in injury to automobile occupants. However, the greatest percentage of accidents occur under low speed impact conditions. It is my feeling that the low percentage of injury producing accidents results primarily from the low severity associated with a large number of accidents rather than from any optimum design on the part of the automobile structure. In fact, it is quite likely that the occupant response during low speed collisions is completely independent of the vehicle structural response.

Shown in the slide are the deceleration-displacement curves recorded in the passenger compartments of two 1970 Chevrolets while impacting a rigid pole barrier at speeds of 5 and 10 MPH, respectively. Films for these crash tests will be shown later in the discussion. At Cornell, crash test vehicles may be impacted into either flat or pole barriers. We feel that the pole barrier, which produces a concentrated loading on the structure, is probably more representative of real world accident conditions. As shown in the slide, the average decelerations recorded during both tests, that is, at 5 and 10 MPH, were nominally near 2 g's. To put this in perspective, it should be recalled that we normally function in a 1 g deceleration environment.

The American 4000 lb. experimental safety vehicle, under development by the Department of Transportation, permits a 6 g deceleration response during collisions up to speeds of 10 MPH. Although the specifications have not yet been finalized, because of dimensional considerations, deceleration values up to 10 g's will most likely be permitted for low speed impact conditions with the proposed 2000 lb. experimental safety vehicle. I know of no individuals who have advanced technical arguments that take exception to either of these two limits that have been specified for these experimental safety vehicles.

Incidentally, present vehicles when impacting flat barriers exhibit deceleration responses nominally near 6 g's during 5 MPH collisions. The higher deceleration loads result for the flat barrier test condition because all of the frontal sheet metal is contacted and crushed during collision.

Shown in the slide is the relationship that different values of a uniform deceleration will have on the collapse distance required for energy absorption. As shown, a uniform 2 g deceleration results in 5 inches of total collapse at 5 MPH and 20 inches of collapse at 10 MPH. On the other hand, the 6 g limits shown for the experimental safety vehicle would result in 1½ inches of collapse at 5 MPH and 6½ inches of collapse at 10 MPH. The advantages of the higher deceleration limits are readily apparent in terms of reducing vehicle damage because the bumper could be placed a reasonable distance away from the body sheet metal.

The relationship between vehicle crush or collapse and occupant response has been considered by many investigators. It has been well documented that unrestrained occupants can benefit from crush properties of the structure only if they are located sufficiently close to the vehicle interior that they will contact the interior before the vehicle motion has stopped. This phenomenon where the occupant contacts the interior during the structural collapse is called ride down. If ride down does not occur, unrestrained occupants will contact the vehicle interior with a velocity essentially equal to the impact velocity of the vehicle. D. E. Martin and C. K. Kroell of the General Motors Research Laboratories in a 1967 SAE paper (No. 670034) considered this problem and concluded that the occupant spacing from the interior must not be greater than one-half of the total vehicle crush before any benefits from ride down can occur. Thus, for the 1970 Chevrolet tests illustrated earlier, ride down could benefit the occupants only if they were spaced not more than 2½ inches behind the instrument panel during the 5 MPH collision and not more than 9 inches during the 10 MPH collision. Since these limits are not realistic in terms of vehicle interior design, it is extremely doubtful that the vehicle crush characteristics have any effect on the injury potential of unrestrained occupants during the low speed impacts.

The low speed collision situation is probably not much different with restrained occupants. All restraint systems have some slack, or lost motion, and a certain minimum velocity change will be required before the slack is taken out of the system and loading is produced on the occupant. Occupant velocity changes relative to the inside of the passenger compartment of approximately 5 MPH are required to remove the slack from such systems. Thus, it is even doubtful that restrained occupants can realize any benefits from the structural properties during these low speed collisions.

The advantages of the higher deceleration limits as they affect the potential for occupant protection at higher impact velocities are somewhat more subtle. The structural problem related to providing occupant protection is concerned with absorbing the vehicular kinetic energy associated with impact speeds usually much higher than 10 MPH. The kinetic energy of a vehicle increases as a square of its velocity. For example, the kinetic energy of a vehicle in a 40 MPH collision is 16 times greater than that of a 10 MPH collision. Now, if we give up 20 inches of vehicular collapse distance to absorb 1/16 of the energy, that is, the kinetic energy equivalent to a 10 MPH collision, then 15/16 of the kinetic energy must be absorbed in the remaining distance between the occupant and the impacted obstacle. This means that in the velocity range where injuries normally occur, either higher severely decelerations must be imposed on the passenger compartment or serious intrusion into the passenger compartment will take place. Consequently, a 6 g rather than a 2 g deceleration response means that the difference between 20 inches and 7 inches, or slightly over one foot is made available for energy absorption during higher speed, injury producing accidents. It is within this latter context that I see the two problems directly related and strongly feel that an increase in the strength requirements to alleviate the vehicle damage problem would also result in a corresponding improvement for restrained occupants during higher speed impacts. Therefore, what is needed for reductions in both property damage and occupant injuries are automobiles that have increased strength in the forward part of the structure.

Now I would like to present some information on the National Association of Independent Insurance (NAII) vehicle damage analysis project. The objective for this study is to determine the feasibility of using mathematical analysis as a tool in determining the damage susceptibility of automobiles. The fact that this is a feasibility study should be emphasized.

Last spring, NAAI contacted Cornell Aeronautical Laboratory concerning the possibility of implementing a vehicle damage study. Their purpose was to determine what approaches might be employed if one was to evaluate the damage susceptibility of a wide range of vehicles under a number of different impact conditions. One approach, quite obviously, would be to purchase a large number of vehicles and then subject each vehicle model to the various test conditions. When all possible test conditions are considered, it soon becomes apparent that this approach— if continued year after year with all classes of vehicles—would be an extremely time consuming and expensive proposition.

A possible alternative approach would be to develop an analytical model that could be used in conjunction with limited experimental testing to eventually accomplish the same general objective. It should be noted that the intent in developing such an analytical model was not to replace the need for conducting controlled tests, but rather to greatly limit the number of vehicle tests that would be required.

Another benefit of such a model would be that it could identify the contributions that various vehicle components might make in terms of reducing vehicle damage. For example, the effect of changing the structural properties of the bumper could be quickly evaluated by a computer run without resorting to the fabrication of a vehicle and subsequent testing. Likewise, the effects of structural changes for other components could be quickly and economically investigated through such computer runs.

For this feasibility study, specific impact conditions were chosen, that is, 5 and 10 MPH impacts into a rigid pole. The investigation was limited to the front and rear structures of a 1970 full size Chevrolet. The pole impact condition rather than impact into a flat barrier was selected for two reasons:

- (1) The pole produces a concentrated load and, consequently, a more severe loading condition on the structure and;
- (2) This test condition is believed to be somewhat more representative of real world conditions. It is indeed unlikely that cars will impact flat surfaces where the loads are uniformly distributed over the front or rear of the vehicle.

Of course, if this initial investigation was successful, the same techniques could be generalized to include other vehicles and different impact conditions at some later date.

For this study, a rather simplified mathematical theory was used to analyze the vehicle structure. It was felt that if this approach was not satisfactory, a more sophisticated or comprehensive theory could be employed at a later time.

A computer model was developed for the front structure. This computer program considers the basic vehicle components that are shown schematically in the slide. Illustrated are the hood, fenders, radiator and hood latch bracket and the front bumper. In the computer program, a distinction is made between the hood latch bracket and the fenders-radiator structure. In addition, with the Chevrolet, the bumper is divided into upper and lower sections and this feature is considered in the computer program. Also shown schematically on this slide are arrows indicating the direction and position of the forces that would be imposed by the pole onto these structural components.

Precise measurements were made on the vehicle structure. These data provide the input for the computer program. The program essentially solves mathematical equations for each of these idealized structural components. The solution to the mathematical equation is the force-deflection characteristics for the various components. These characteristics are shown in the slide. Also shown is the sum of these forces which represents the expected overall structural characteristic of the vehicle. The area under this total force curve represents the energy that the structure will absorb for a given collapse distance.

We know that for 5 MPH, the vehicle structure must absorb about 3000 ft.-lbs. of kinetic energy while at 10 MPH the structure must absorb about 12,000 ft.-lbs. Areas which represent the equivalent of these respective energies are mapped out on the slide. At the bottom of the slides, collapse distances of 5 inches and 14 inches are indicated for the 5 and 10 MPH collisions, respectively.

A similar computer program was developed for the rear structure of the vehicle. Both programs were exercised to determine the degree to which the vehicle would deform for 5 and 10 MPH impacts with a rigid pole. The output of the program is the force deflection properties of the structure and the degree of external vehicle collapse.

Controlled tests to validate these computer simulations were conducted. Now we will show some of the film taken from these test results. It should be noted that the only purpose of these tests was to validate the mathematical model.

The first scene is a real time view of the vehicle impacting the pole barrier at 5 MPH. Incidentally, a 5 MPH speed is equivalent to a normal jogging speed. The vehicle was operating under its own power during all of the tests. This scene is followed by a high speed photographic view taken from an angle of 45 degrees in front of the vehicle. For this test condition, the pole penetrated 5 inches into the vehicle structure. This value is the same as that predicted by the computer program. This view shows the structural collapse from underneath the vehicle and here we see the damaged vehicle after the 5 MPH collision.

The same vehicle was impacted at 5 MPH backwards into the pole barrier. This collision resulted in 5 inches of structural collapse which is the same as that predicted by the computer model. Shown in this scene is the vehicle after the 5 MPH rear collision.

An identical vehicle was then subjected to 10 MPH front and rear tests. Although I am showing the frontal impact test first, actually the rear collision was performed prior to the frontal collision. The reason for this is apparent when we see that the radiator was severely damaged in this test. This is a frontal view taken at a 45 degree angle, which shows the severe collapse of the structure. The underneath view dramatically shows the collapse of the radiator support structure. About 17 inches of exterior deformation was measured after the test. This compares with a value of 14 inches that was predicted by the computer model.

This sequence shows the 10 MPH rear impact. The underneath view shows that substantial deformation of the fuel tank took place. The tank was loaded with a fluid that demonstrates some of the characteristics of gasoline. It should be noted that even though the tank was severely deformed, no leakage of fluid occurred.

We have summarized on a slide the comparisons between the predicted values for exterior deformations and the exact values determined as a result of the four tests. It is worth noting that the analytical predictions were reasonably correct for the 5 MPH impacts. However, for the 10 MPH cases, they tended to predict values for the deformation that were somewhat lower than that recorded in the tests. These results for the 10 MPH collision were further investigated after the tests. As a result of this investigation, the modeling of the hood and radiator support structure has been refined. Similar refinements were also made for the trunk region of the rear structure.

We are now in the process of checking the validity of the refined program. For this purpose, a 1969 Ford has been purchased. A Ford was selected for these tests because it represents a structure that is quite different from that of the Chevrolet. Measurements have been made and the input data are being prepared for the computer. It is expected that the computer analysis will be completed before the end of the month. At that time, we will conduct 10 MPH front and rear tests on the 1969 Ford. These results will be compared to those predicted by the computer.

At the present stage of the study, our tentative conclusions are:

- (1) Within the scope of this program, the feasibility of predicting vehicle damage has been established. That is, the present model is highly accurate at 5 MPH and is expected to be refined to be accurate for the 10 MPH collisions. When this latter phase is completed, a valid model will be available for this type of impact condition.

- (2) An attempt should be made to generalize these limited results to other situations, that is, to consider different impact conditions and different types of vehicle designs. The result of this generalization would be a computer program that would allow various potential users the flexibility to quickly and economically analyze various vehicle damage situations.

At this point, I would like to briefly summarize how such a generalized analytical model could be used as a tool in evaluating the low speed structural performance of automobiles. An important application for this model would be in reducing the number of full scale tests required. For example, a vehicle might be impact tested at 10 MPH and mathematical analysis used to determine how the vehicle would perform at other impact velocities. Furthermore, usually only minor structural differences are evident between many of the automobiles produced by the same manufacturer. The mathematical model could be used to determine the effects that these small differences would have on performance without requiring full scale tests of all vehicles produced by a single manufacturer.

We plan to issue a final report covering the project early this summer. Copies will be available from either the National Association of Independent Insurers or Cornell Aeronautical Laboratory. Upon request, copies will be furnished to Congress, automobile manufacturers, governmental agencies and other interested parties.

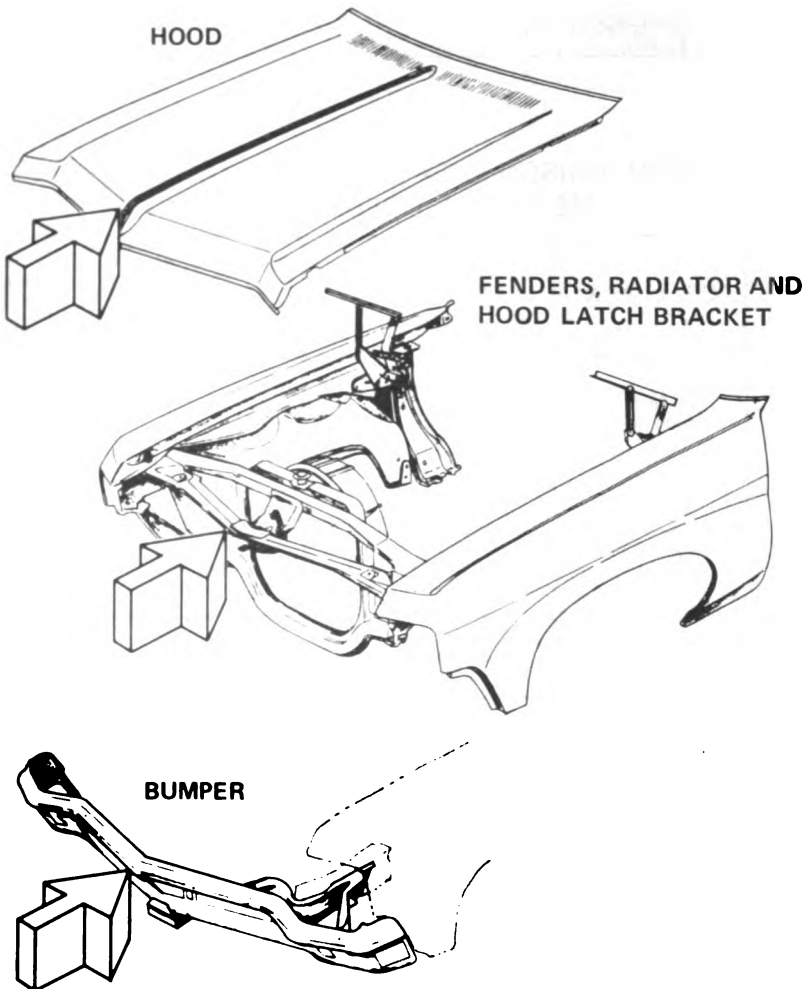
**COLLAPSE DISTANCE (IN INCHES) REQUIRED FOR  
DIFFERENT UNIFORM DECELERATION LEVELS**

IMPACT SPEED	DECELERATION LEVEL		
	2 g	6 g *	10 g **
5 MPH	5 in.	1 2/3 in.	1 in.
10 MPH	20 in.	6 2/3 in.	4 in.

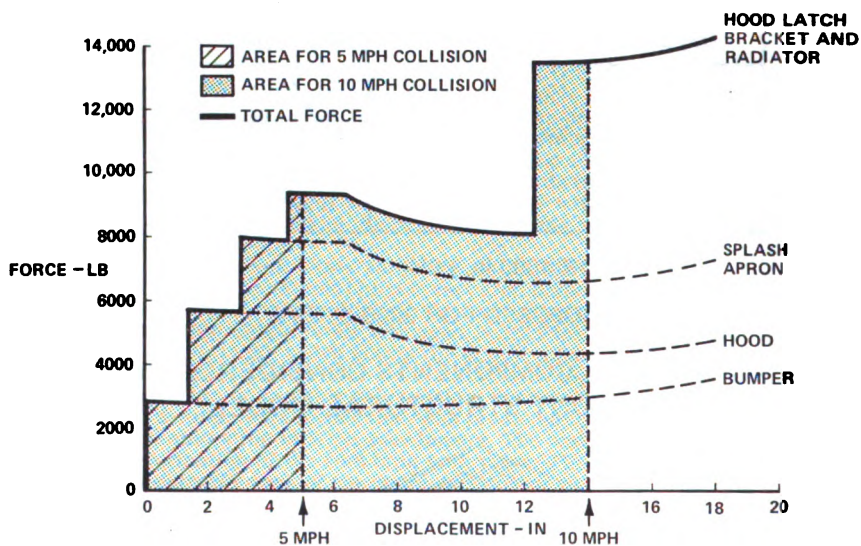
\* LIMIT FOR 4000 lb. ESV

\*\* LIMIT PROPOSED FOR 2000 lb. ESV

**VEHICLE COMPONENTS CONSIDERED IN  
FRONT STRUCTURAL MODEL**



# FORCE-DEFLECTION CHARACTERISTICS FOR FRONTAL COLLISIONS



## COMPARISON BETWEEN PREDICTED AND MEASURED DEFORMATION

COLLISION	PREDICTED DEFORMATION (IN)	MEASURED DEFORMATION (IN)
5 MPH FRONT	5.8	5.0
5 MPH REAR	4.5	4.2
10 MPH FRONT	14.0	17.5
10 MPH REAR	10.5	16.0

(The questions and answers referred to on p. 1163 follow:)

NATIONAL ASSOCIATION OF INDEPENDENT INSURERS,  
Chicago, Ill., July 23, 1971.

HON. PHILIP A. HART,  
U.S. Senate,  
Committee on Commerce,  
Washington, D.C.

Dear SENATOR HART: Attached is our response to your questions based on the testimony presented to the Senate Commerce Committee.

We hope these answers enable you to clarify the record and better understand NAI's Dual Protection Plan.

Many of the judgments and opinions needed to respond to your inquiry will now be verified or disproved in the real world market place. We are pleased to note that Illinois has adopted a program which is consistent with the major provisions of Dual Protection. Such experimentation is, in our judgment, in the best interest of the insuring public.

Sincerely,

VESTAL LEMMON, *President.*

Enclosure.

#### RESPONSE TO SENATOR PHILIP A. HART'S INQUIRY ON NAI'S TESTIMONY

*1. In describing the Dual Protection Plan, you state that "cost-wise, the basic features of our program are intended to stabilize or reduce the premiums for the average motorist."*

*(a) Does your plan preserve tort liability?*

Answer. NAI's Dual Protection Plan does preserve an individual's vital rights under the existing tort liability system.

*(b) In a successful suit by plaintiff are the first party coverages paid by the plaintiff's insurer set off against the judgment against the defendant, and/or is the successful plaintiff's insurer subrogated to the rights of the plaintiff to the extent it has paid first party benefits?*

Answer. Under NAI's Dual Protection Plan, the insurance company issuing the basic automatic-pay coverage immediately pays the injured party (named insured, family member, guest passenger or pedestrian) medical and disability benefits as set forth in the contract, regardless of fault. The insurer paying these benefits is entitled to reimbursement from a legally liable third party. Reimbursement will occur, either by (1) mandatory intercompany arbitration in all cases in which the tort defendant is insured by a company licensed in the enacting state, or (2) by the subrogation procedure in other cases.

The Plan does not make any specific provisions either requiring or preventing subrogation under the optional Catastrophe Loss Coverage. This is left to the individual insurance company to decide whether to provide for a right of subrogation, subject to the laws of the particular state.

The Plan thereby retains the means and opportunity to allocate the costs of insurance in relation to the variations in hazards among different risks, individually or by class grouping, and retain equitable distribution of insurance premium costs among risks. This preserves the basic concept that motoring should pay its own way, and that those who represent the greatest hazard should bear the largest share of the total premium burden.

*(c) What are the limitations on intangible loss recoveries under your Dual Protection proposal?*

Answer. One of the cost savings and stabilizing features of our program is the standard for pain and suffering awards in the less serious cases. The Plan proposes that such standard apply to certain cases where liability claims are lodged or suits filed against motorists who are covered by liability insurance policies containing basic automatic-pay coverage.

Under those standards, awards for pain and suffering, mental anguish and inconvenience would be limited to an amount equal to 50% of the first \$500 of reasonable medical and hospital treatment expenses and 100% of such expenses over \$500.

While differences of view may occur as to the propriety of distinguishing, in degree of recovery, between medical losses of a nominal amount and those that are more substantial, the recent studies indicate some existing lack of proper balance between nominal medical losses and recoveries for attendant intangibles in comparison to medical losses of more substantial amounts. NAI's Dual Pro-

tection Plan does make a distinction in the allowances for intangibles between nominal medical losses and those of a more substantial amount.

There would be no limitations in cases of death, permanent total or partial disability, disfigurement or loss of limb or other special circumstances shown to involve actual substantial pain and suffering.

We believe the public wants and is willing to pay for reimbursement for these so-called intangible damages from a guilty driver. This has been demonstrated by several comprehensive public attitude surveys.

(d) *Please explain in detail the basic features of your program?*

Answer. Attached as Addendum 1 is an explanatory memorandum of NAI's Dual Protection Plan.

2. *On Page 8 of your prepared statement, you state "We believe S. 945 can only increase insurance costs."*

(a) *You have estimated that your Basic Protection Plan will cover 90% of the total economic loss. It has been estimated that S. 945 would cover 99.6% of the economic losses resulting from automobile accidents. The Basic Protection Plan puts certain limitations on pain and suffering recovery. S. 945 prevents a person from suing another party unless that person has suffered permanent injury or in the language of the bill "catastrophic harm". In other words, there is minimum overlay of liability on the first party mandatory policy coverages. Please explain in detail why S. 945 would increase insurance costs and compare the projected cost factors of S. 945 with the Basic Protection Plan projected cost factors.*

Answer. The quotation from which this question flows is lifted from a portion of a sentence and, as is so often the case in such approach, obscures the complete thought.

As we have pointed out in our statement, S. 945 would increase insurance costs for several reasons which are not even related to benefits or compensation. The present tort liability system contains deterrents which aid traffic law enforcement and traffic safety programs. On Pages 6 and 7 of our statement and in a subsequent question we indicate that the deterrents of the fault system provide a strong incentive to avoid accidents and conduct which may be charged as negligence. S. 945 substantially eliminates these deterrents and consequently will increase costs.

Furthermore, S. 945 would require an insurance company to accept and insure for life every licensed driver who makes an application to that company unless the company can prove that such writings would cause its insolvency. The underwriting process is designed to protect the majority of responsible motorists of normal driving habits from the extra hazardous losses of the irresponsible drivers. This process provides substantial savings to the majority of today's drivers and if eliminated as is done in S. 945, would increase costs for insurance.

The Public Law authorizing the "comprehensive study and investigation of the existing compensation system for auto accident losses" does, by implication, recognize that the information to be developed will involve a degree of estimation in any conclusions reached. The limitations of using data or estimates derived from diverse sources, as a basis for conclusions, are referred to repeatedly in the report to the Congress and the President made by Transportation Secretary Volpe.

The two percentages quoted in this question are not comparable nor necessarily in conflict and yet are, to a substantial degree, compatible. The lesser percentage figure refers to the number of losses while the greater one refers to dollar amounts. The problem involved in attempting to compare unlike data is indicated in the illustration given on Page 1 of the final report made by Transportation Secretary Volpe.

The concepts upon which the Dual Protection Plan is erected and those underlying S. 945, differ. The Dual Protection Plan is a realistic approach to solving the problem of basic compensable economic loss while S. 945 tends to go beyond this and include the "societal" economic loss. The distinction between these concepts is discussed on Pages 4 through 7 of the final report made by Transportation Secretary Volpe.

The thrust of the existing insurance reparations system and the Dual Protection Plan is to deal effectively with the compensable economic losses. On the other hand, S. 945 will tend to encourage recoveries on a broader scale. This seems to be recognized as a fact in Sec. 4 of S. 945 which states "In such cases there may be a recovery for economic loss in excess of that received, or entitled to be received under this act, as well as for other elements of damage."

Since existing insurance systems, as well as the Dual Protection Plan, are designed to evaluate and compensate for automobile economic loss, and not encourage recovery for amounts in excess thereof, whereas S. 945 will permit such recovery it seems clear that the assertion that S. 945 will lead to an increase in insurance costs has a factual foundation.

(b) *For every dollar collected under the Dual Protection Plan, how much money would be returned to policyholders in the form of direct benefits, and please indicate just what those benefits are.*

Answer. It is not possible to predict with certainty the exact "benefit-to-premium" ratio that would be produced by our Plan, or *any* proposed new reparations plan including S. 945. However, we can state with confidence that under Dual Protection a far greater portion of the bodily injury insurance premium dollar would be returned to policyholders in direct claim payments than at present.

There are several reasons for this belief. Under Dual Protection, the policyholder (or any one of the other categories of eligible claimants) will be paid up to \$2,000 for medical expenses and \$6,000 for income loss immediately regardless of fault. Since no lawyer will be needed to collect such benefits, these amounts will be recovered in full by the claimant. As pointed out earlier, well over 90% of the medical/disability losses fall below these limits, so that the aggregate savings in "transfer costs" affected by this feature of Dual Protection will be very substantial.

As to the matter of intangible damages, if the claimant is satisfied that all he is entitled to is the amount determined by the statutory formula, he should have little need or occasion to resort to litigation or incur attendant legal expenses. In cases where his economic losses exceed the basic no-fault coverage, and/or where the seriousness of his injuries indicate he is entitled to greater intangible damages than provided by the formula, the injured party retains the right to bring suit if not satisfied with a settlement offer by the tortfeasor or his insurer. But even when litigation does so occur, the "transfer cost" of the system in delivering benefits will be smaller than at present, because the fee charged by the lawyer can fairly be based only upon the amount he *actually recovers* for the claimant—from which is excluded the no-fault economic loss benefits already collected directly and in full by the claimant himself.

It must be kept in mind that under *any* system of compensating for auto accident losses—first party, third party, "fault," or "no-fault"—it is necessary to incur the costs of determining that an accident has occurred, that injuries were sustained, and to develop the factual data for properly evaluating the alleged losses in dollar amount. Under a third party recovery system it is necessary, of course, to take an additional step and establish the source of fault. However, the bases for establishing fault are contained in the several laws pertaining to this item and are relatively simple to apply.

Controversies, when they do arise, generally involve a difference of opinion as to the dollar value of loss rather than the question of the existence of fault.

A first party recovery system, unless it embodies a fixed dollar benefits—which can compound inequities alleged under a third party recovery system—will not eliminate the controversies as to dollar amount evaluation of losses, nor the costs incurred in arbitrating such matters. As a matter of fact, it is possible that a first party recovery system can accelerate the costs of evaluating losses, depending on the factors for evaluation to be considered.

Because of these several unknowns, it is speculative whether *any* first party recovery system, including both S. 945 and the Dual Protection Plan, will markedly alter the costs of establishing the equitable dollar value of individual losses. In other lines of insurance of a first party type, such as workmen's compensation, accident and sickness, hospital and medical, Medicare and Medicaid where, commonly, scheduled benefits are provided, frequent controversies occur as to the validity of a claim for loss or the dollar evaluation thereof.

While the cost of operating and administering any insurance system is important and cannot be ignored there are other factors equally important.

It is our view that the Dual Protection Plan responds to an indicated public desire and need for a loss recovery system that embodies the *potential* for a saving in cost and an improvement in efficiency. In our judgment, it is more forthright to develop a program that meets a public need and operate it in an efficient manner at minimum cost than to speculate on savings based on inadequate data which subsequent events demonstrate cannot be achieved.

(c) *How does the figure in (b) compare with the projected figure for S. 945?*

Answer. For the reasons cited in (b) above a comparison of specific figures is not attainable on a prospective basis. It is possible, of course, to erect mathematical models that will appear to demonstrate the superiority of one system over the other. This can be done quite readily by varying the assumptions inserted in the model. The vice of this approach is that the assumptions may lack validity, or be based on inadequate factual information, or both, with the result that the conclusion may be misleading and impossible of attainment.

In our view, it is preferable and in the best interest of the public, to provide a recovery system that meets their indicated desires and be perfectly honest in stating the areas of uncertainty as to cost, rather than to make promises as to cost that may not, subsequently, be achieved. Secretary John Volpe made the following observation in his statement before the Subcommittee on Commerce and Finance, House Interstate and Foreign Commerce Committee:

"It is also clear that there exists genuine and warranted concern as to the unknown and *essentially unknowable* price and cost implications of any major change in the system, which of course would ultimately affect the cost and quality of service to consumers of insurance."

The best way to determine these costs is through experimentation. Such experimentation will take place since several states have enacted plans with similar provisions.

3. *On the first page of your prepared statement you say that "Independent companies have long been recognized as the most competitive and progressive segment of the fire casualty insurance business." Twelve years ago this month the Senate Antitrust and Monopoly Subcommittee was told that the NAI, according to its bylaws, "believes in competition in all aspects of the business including forms, services, and methods of distribution and price." If the NAI still believes in competition in all of these aspects, why does the NAI oppose S. 946 which would expand methods of distribution and permit group merchandising?*

Answer. Article I, Section 2 of NAI's Bylaws states:

"To carry out its purpose, the aims of the corporation are:

A. To preserve reasonable competition and thereby to encourage and safeguard initiative, enterprise, improvement and development in the insurance industry under such reasonable governmental regulation as is essential for the protection of the public."

This is one of the main cornerstones of NAI's policy. Another, just as important, however, is this Association's support of insurance regulation on the state level.

As stated on Page 17 of NAI's statement, this Association is opposed to S. 946 because we believe the implementation of group automobile insurance plans should be a matter for individual state determination. We see no justifiable need for Federal intervention in this area since the state regulatory climate already allows for innovative activity in this area.

Half the states are experimenting and have approved group programs. Senate 946 would prohibit states from determining the best policy for its residents.

We opposed both S. 945 and S. 946 because we believe the states should be left the responsibility and authority to change or alter the automobile accident reparations system and to oversee the implementation of group marketing programs.

4. *On Page 16 of your statement you ask Congress to adopt Secretary Volpe's recommendation that no-fault reform proceed on a state-by-state basis. Yet, the NAI apparently fails to include in its Dual Protection Plan one of Secretary Volpe's key recommendations. On Page 136 of the DOT's final report, the no-fault system advocated by Secretary Volpe is described as follows:*

"The goal of the system should be that no recovery for any loss of the type covered by the applicable required coverage would be permitted in any private action for damages." The report goes on to say that "no person should recover for intangible losses (pain and suffering) unless he establishes he suffered permanent injury . . . or that he incurred personal medical expenses . . . in excess of a rather high (emphasis added) dollar threshold." Doesn't the NAI Dual Protection Plan contravene this recommendation of Secretary Volpe?

Answer. A review of our testimony will indicate that NAI has not endorsed all of the recommendations made by Secretary Volpe. As our testimony clearly indicates the position of the NAI is that experimentation at the state level is the most appropriate method of testing and evaluating automobile insurance reform.

The phrasing of your question indicates a belief that Secretary Volpe's proposal for reform has been described in final form. However, as can be readily seen, the Secretary's proposal is tentative and approximate in nature. The following excerpts from the DOT's final report illustrate this point:

Page 133 regarding the proposed system:

"It should be emphasized that this is a goal to be achieved over time, not an action blueprint for tomorrow. Moving in stages toward such a goal would allow us to test its virtues and discover its faults, whereby giving us new knowledge that could serve to modify the goal itself."

Page 133:

"The board outlines of such a system are proposed below."

Page 133:

"It should be emphasized that the policy limits and deductibles used in the following description are *basically illustrative*, . . ."

Because of the approximate nature of the proposed system, there would appear to be no reason to either endorse or reject the entire proposal. It would seem that the public interest is best served by more selective judgments and evaluations.

The two quotations cited in the question refer to very different areas. The first quotation which was taken from the first paragraph on Page 136 refers to the problem of duplicate recovery. The Dual Protection program eliminates duplication within the automobile insurance system because monies recovered under the mandatory no-fault coverage under Dual Protection are deducted from monies recovered under tort remedy. In addition, except as to workmen's compensation cases, Dual Protection has been made the primary source of recovery for auto accident losses.

The second quotation cited in the question deals with the recovery of intangible losses. To the extent that Secretary Volpe's proposal does not completely eliminate recovery for intangible losses his proposal is consistent in principle with Dual Protection. His proposal differs in that it refers to a *threshold* type limitation which denies injured parties any intangible damages (subject to certain exceptions) if their medical expenses do not reach a specified level, but allows *unlimited* damages once medical expenses pass the threshold. Dual Protection on the other hand retains the right of every injured party with subject (with certain exceptions) to formula limitations keyed to medical expenses. We believe our approach to this matter is much more equitable than an arbitrary threshold below which one can recover nothing and above which he can recover without limit. We believe, too, that it is more likely to satisfy the public.

5. In the University of Michigan reparations study cited by you on Page 6, the following paraphrased sentence appears at Page 296 and 297: 33% of the defendants surveyed do not know whether or not the plaintiff (injured victim) had received a settlement from the plaintiff's insurance company. How does this failure of the defendant to know whether or not the plaintiff had recovered affect your argument that the tort system preserves personal accountability and has a deterrent effect upon reckless driving?

Answer. The question, as you have stated it, is difficult to interpret. There would be very little, if any, negligence deterrent on the defendant for benefits paid the plaintiff (injured victim) by the plaintiff's insurance company. These would be first party benefit payments under the medical payments or uninsured motorists coverages. This is the position we have always taken and the point we were trying to make with regard to the deterrent effect of a pure no-fault plan.

After studying the pages cited in your question, we suspect you mean the defendant's insurance company. If this is your question, our response would be that we know that the fault liability system governing automobile accident is not a perfect deterrent but it is better than the other existing reparations systems such as workmen's compensation, social security, etc. The authors of the Michigan study recognize this as discussed in Pages 88 through 102. We pointed this in our statement and the footnotes on Page 6 and 7 of that statement.

The 33% figure cited really tells us nothing very probative about the deterrent effect of the fault system; all it tells us is that 33% of a group of defendants assumed that if the plaintiff was entitled to recover, their insurer had paid him or would pay him—which is of course the very reason for carrying liability insurance—to be able to acquit one's responsibilities if liable for negligent conduct.

The primary concern of a defendant is the determination of his guilt or innocence and not the dollar evaluation thereof. Hence, it is not surprising that the

survey referred to in your question indicates that a substantial quantity of defendants are uninformed as to the quantity of settlement affected. This is one of the reasons we question the results of the DOT's Serious Injury Study cited in Question 9.

6. *The Nationwide Insurance Company, a member of your organization, has proposed their own no-fault auto compensation plan. Under the Nationwide plan, is tort liability completely eliminated as between claimants? In what other significant respects does the Nationwide no-fault plan differ from the NAI's Dual Protection Plan?*

Answer. The Nationwide plan does eliminate tort liability. If you would like more detailed information on their program, we suggest you contact them directly.

NAII has never made it a condition of membership that a member company is obligated to support any program or position taken by the entire membership, if that company disagrees with that position. Nationwide has stated publicly that if a particular state wanted a plan such as Dual Protection, it would support our position as a step in the right direction. In some states, it has taken such a posture.

7. *Attached to this letter you will find a copy of a Farmer's Insurance Claim bulletin to all district managers and agents in the Kansas City, Mo., region date June 6, 1970. That letter describes the way in which State Farm Mutual, Allstate Insurance Company, Safeco Insurance Company, and several other large underwriters have tightened their underwriting rules. The Farmer's bulletin concludes:*

*"Naturally this change in the market will result in diverting this potentially unprofitable business towards Farmers. To avoid this eventuality and help sustain our progress toward meeting our 1970 goal of improving our underwriting loss experience, we find it necessary to amend our accident and citation rules accordingly."*

*(a) Does the NAII consider this kind of selective underwriting competition in the best interest of the public?*

Answer. The Bulletin cited in the above question was not attached to your letter. You indicated that it would be sent under separate cover but it has not been received.

This question pre-supposes that the quoted allegation is an established fact. In our opinion, a proper and succinct answer based on general facts known to us, is an unqualified "no." We feel sure that you would concede that any statement made by a company, in communications to staff personnel, in regard to actions taken by any competitors probably reflects only the view of the writer and may possibly contain a degree of bias to which the competitors may not concur. Hence, it is fallacious to accept a conclusion as fact prior to an examination of the validity of statements made and before those accused are given an opportunity to present facts in rebuttal.

NAII feels that the public is best served when companies with various marketing concepts, underwriting philosophies and rating plans are allowed to compete for a "book of business" which is compatible with its corporate objectives and will not jeopardize its financial solvency. The product of such competition is efficiency of operations with lower costs to the vast majority of automobile insurance consumers.

In our judgment, the natural force of competition, although sometimes imperfect for short periods of time, will serve the public far better than any program that would require companies to insure everyone who submits an application. Our reasons are set forth on Page 13 of the statement.

In response to an inquiry from the Federal Trade Commission a few years ago, we made the following general comments about underwriting operational functions and practices. We feel these comments are also apropos to your inquiry.

"Much of the literature referring to 'underwriting' has over-simplified a complex function and has assumed that there exists 'standard underwriting practices' and 'standard underwriting procedures'. The truth is that underwriting practices vary by company, by state or territory, and over time. Underwriting is essentially a fitting or selection process; it attempts to select that group of consumers whose loss potential fits within the exposure contemplated in the rates filed and approved for that company.

"The parameters of the selection process in any one company at any one time are dictated by a complexity of internal and external factors—for example, the

company type, the character and quality of its administration, the financial condition and aims of the company, the broadness or narrowness of the type of consumer the company has elected or is capable of serving, the adequacy of the feasible rate levels for the markets served or selected, legislative and regulatory restrictions on the selection process, the pricing underwriting and marketing practices of competitors for that market, the willingness and ability of management to subsidize or support social, economic or political needs or aims with respect to its market or the total market or new markets and the willingness and ability of management to continue to employ its resources in the industry."

Risks accepted by the industry on a voluntary basis under this process represent upwards of 97% of the insurance industry's automobile liability insurance market. The other 3% is also served by the industry through its automobile insurance plans.

*(b) By these practices are the companies in your association creating a larger residual market and aggravating the availability problem?*

Answer. NAII's member companies have consistently increased their percentage of both the total voluntary and involuntary automobile insurance market. Our companies write well over 50% of the total private passenger market and in 1970 the automobile insurance premium volume of our members increased from \$5,303,142,000 to \$6,196,832,000, or almost 17%. We feel our companies have done more than any other group of companies to alleviate the availability problem and provide protection for the voluntary as well as involuntary market. The following demonstrates the basis for this conclusion.

PRIVATE PASSENGER NONFLEET EARNED EXPOSURES WRITTEN BY COMPANIES REPORTING TO NAII

Year	Voluntary	Assigned risk
1967.....	27, 119, 136	922, 380
1968.....	29, 036, 101	952, 153
1969.....	31, 779, 829	1, 013, 158

1970 statistics are not available at this time.

Since our companies write the largest portion of the so-called residual market, it would certainly not be to their advantage to create such a market.

*(c) Do your member companies consider all moving accidents for the proceeding (sic) year in accepting, rejecting, or rating a new applicant for auto insurance, or do they consider only moving accidents where the driver was at fault? If fault is considered, where does the company receiving the insurance application find out who was at fault?*

Answer. This is a very general question since you ask about certain specific practices or procedures followed by over 350 insurance companies. NAII is an advisory rather than a rating organization. Therefore, we do not maintain underwriting or rating manuals of our companies. Our membership acts independently on such matters and there is no uniformity of practice. Our response must be based on our general knowledge of such procedures.

Generally most "Safe Driver Insurance Plans" used today only charge for accidents but a few may still have a traffic violation factor. The latter are not commonly used, however, and underwriters as well as raters generally consider only the accident record.

Furthermore, at the present time, most Safe Driver Insurance Plans which assign points for accidents try to restrict surcharges to "at fault" accidents. This is done by "exceptions" to the rule which preclude the assignment of points for which the applicant could not have been at fault e.g. lawfully parked vehicle, hit-and-run, etc.

Under a "no-fault" plan there would be no way of applying surcharges solely to accidents in which the insured was at fault or presumably at fault because fault would no longer be determined. At the present time, a majority of drivers are rewarded for their good driving or accident-free records. It is difficult to conceive of an equitable safe driving plan that will reward good drivers under a "no-fault" system. A Safe Driver Insurance Plan based only on traffic violations or accident involvement, would be replete with enforcement problems as is evidenced by the present trend to "accident only" Safe Driver Insurance Plans. In our judgment, to surcharge motorists solely because of accident involvement without determination of fault would prove unacceptable to the public from a long-range standpoint.

8. *In your prepared statement you argue that a first party reparations system would foster reckless driving. This Committee has received testimony that the accident rate in Puerto Rico actually went down when their no-fault plan was implemented. On what basis, then, do you conclude that a first party reparations system aggravates the accident problem?*

Answer. In our judgment, the Puerto Rico Plan has been in effect for too short a period of time to make such a judgment about the effects of such a complex and far-reaching program on driving attitudes and accident involvement. Furthermore, we feel that one cannot properly draw conclusions about the implications of the Puerto Rico Plan on the motoring public of the States because of the different social, economic and political conditions which exist in that commonwealth.

Some of our company representatives who have been directly involved with Puerto Rico have observed that if the decline in accident rate actually develops for this brief period of time, it may well be attributable to several factors unrelated to the new no-fault law.

First, police have investigated claims faster and obtained more information than under the old system because the government is involved with the payments made under the program.

Secondly, our informants point to the very important fact that during the period of time following adoption of the no-fault law there occurred purely coincidentally a "down-turn" of the economy in the United States which reduced Puerto Rico tourism considerably and resulted in high unemployment of many connected with the tourist industry. It is a proven fact that when people cannot purchase as many automobiles and travel as extensively because of unemployment or other factors, the risk environment changes and accident frequency drops.

Similar results may be observed under the fault system of this country. Many companies noticed improved underwriting results in the United States in 1970 and 1971 when the above-cited economic conditions were operative. Some companies are preparing to adjust their rates for this improved accident frequency.

There are many economic factors affecting our business over which we have no control. Historically, it has been observed that in periods when the general economy is lethargic or in a declining phase, our business tends toward greater profitability. Conversely, in an accelerating economy stimulated by inflationary pressures, profits in the insurance business are depressed or non-existent, the degree depending on the severity and length of the cyclical movement.

9. *In your prepared testimony you state that "it would be unfair and unwise to shift the cost away from those who engage in the pursuit and thereby subsidize it." How, then, do you justify preserving the liability system which the Department of Transportation study reports already shift away costs when delivering compensation to seriously injured accident victims? For example, seriously injured accident victims suffer about \$5 billion in compensable economic loss. The present tort liability system pays for approximately \$1.1 billion of that \$5 billion in loss, or 24% of the compensation received. Other sources pay for 58% of the compensation received. If it is unfair and unwise to shift the costs away from those who engage in the pursuit, thereby subsidizing it, what do you propose to do about the way in which the tort system which you preserve in your Dual Protection Plan presently shifts those costs away?*

Answer. We do not believe it is accurate to state, as the question does, that the liability system "shift(s) away when delivering compensation to seriously injured accident victims." Under the present liability system, the right of recovery of an accident victim in tort is a *primary* right, that is, the defendant cannot reduce his liability to the plaintiff by the amount of any collateral source benefits to which plaintiff has access, such as A & H coverage, sick leave, Medicare, etc. Thus, *in delivering the compensation it is designed to deliver in the situations it is designed to cover*, the liability system provides *primary* benefits.

Dual Protection would greatly expand the scope of basic economic loss protection afforded by the present system to cover many accident situations not now compensated by it. In so doing, it preserves and extends the principle of primacy of recovery now embodied in the present liability system. By contrast, S. 945 would abandon that principle and make its coverage benefits excess over most collateral sources of benefits available to the injured party, subject only to the possibility that one of such collateral sources might choose to make itself excess.

We also question how accurately the figures cited from the Department of Transportation's *Economic Consequences of Automobile Accident Injury Study*

represent the actual economic losses of accident victims and the compensation received from various sources including the tort liability system. In our judgment, the aggregate estimated loss figure is grossly overstated and the aggregate recovery amount is understated. These aggregates were stressed in the news release of the study in spite of the fact that the report itself states that the aggregates are not as reliable as averages or ratios. The following statements are taken directly from the study:

On Page 96 (Part II) of the report, it states:

"Due to the speculative nature of the 'future' losses component of the total economic loss, the tabulations have been presented with and without future losses."

On Page 15 (Part I) the following statement is found:

"Consequently this study does not provide reliable estimates of aggregates. Average losses and reparations, or ratios of one variable to another, tend to be less sensitive to the problem of coverage than aggregates and therefore are more reliable as reported in this study."

On Page 17 (Part I) it states:

"The principle focus of this study is on economic losses (*on a per individual or per family basis*) due to serious injury or death from motor vehicle accidents and reparations for such losses from various sources."

On Page 18 (Part I) it states:

"The sample was designed in such a way as to provide more precise estimates of averages and ratios than to aggregates."

One must question a methodology which accepts without question or verification the exact dollar amount of economic loss suffered and the exact dollar amount of compensation received from each source for an accident which occurred some 2½ years previously.

Much of this information could have been verified. We have been told that the pilot study did ask the respondent to identify their own insurance carrier or the insurer of the tortfeasor. This pilot study revealed that in a significant number of cases, the respondent did not remember or know the names of the insurers and consequently this valuable source of information was not checked. It is difficult for us to understand how a respondent can recall detailed dollar amounts of expenses and sources of recovery but not the names of the insurers.

There are many inconsistencies in the area of recovery. The DOT's *Public Attitudes toward Auto Insurance Study* reported that 78% of its respondents were covered by auto medical insurance (NAII's experience shows over 80%) but this Serious Injury Study found only 54% reported having such coverage and only 37.9% recovered from this source. The same disparity exists for collision insurance. The *Public Attitudes Study* found that 77% of car-owning public carried collision insurance but only 29.8% of the seriously injured collected something from this source. We understand that one of the reasons medical payments recoveries may be understated is that the researchers did not understand that funeral expenses were reimbursable under auto medical payments coverage and did not solicit this information in fatality cases.

Furthermore, since 36% of the cases in the study were single-vehicle accidents, which are generally more likely to result in death or severe injury, the economic loss would be much greater and recovery from tort liability would be unavailable.

These are just a few of the reasons we are reluctant to accept the aggregates listed in your question.

As noted above, NAII's Dual Protection Plan does not shift the costs away from those who drive and subsidize it by other sources of recovery. The Dual Protection Plan would provide the injured accident victim swift payment of his basic economic losses (\$2,000 of medical, hospital and funeral expenses and \$6,000 of income loss) regardless of fault. For more serious injuries, the plan requires companies to offer a catastrophe coverage insuring at least the insured and members of his family up to \$100,000 per person for medical, hospital and funeral expenses, up to \$750 per month for net income loss and up to \$750 per month for survivor's benefits to dependents subject to a \$25,000 limit plus a death benefit of \$5,000 payable to a named beneficiary. In addition, in seriously injured cases the person retains the same right of suit he has today for general damages without any statutory limitations.

## Cost-Cutting Provisions . . .

To minimize the costs of the compensation system, Dual Protection provides that damage awards for pain and suffering in the less serious cases (not involving death, permanent disability, disfigurement, loss of limb, etc.) be governed by a formula of between 50% and 100% of the claimant's medical/hospital bills. The Plan also calls for special settlement procedures to more quickly and economically handle small claims against negligent drivers, court supervision of the lawyers' contingent fee system, and stiffer penalties for fraudulent claims.

## Toward a Total Solution . . .

Dual Protection is a sound and well-balanced approach to solving today's automobile insurance problems. Not only will the Plan's coverage features compensate more injured persons faster and more efficiently, but it sets forth actions and proposals aimed at:

- Curbing the accident toll through research, public education, and stronger traffic laws and enforcement.
- Reducing the severity of injuries by fostering improved automobile safety design.
- Developing economic incentives for the production and purchase of more damage-resistant automobiles.
- Cutting the costs of automobile damage repairs through advanced repair technology.

Thus, Dual Protection treats causes rather than symptoms, and in so doing it promises to make a lasting contribution to the personal and financial well-being of the American motoring public.

*For further information, write the  
Public Relations Director:*

**National Association of Independent Insurers**  
30 West Monroe Street, Chicago, Illinois 60603  
Tel.: (312) 263-6038



# DUAL PROTECTION

## What It Is . . .

Dual Protection is a realistic plan to improve the way in which people are compensated for the injuries they suffer in automobile accidents. Its primary aims are to pay more people more medical and disability benefits faster, while stabilizing the overall cost of the system. Developed by the National Association of Independent Insurers, Dual Protection would:

- Automatically begin paying medical expenses and lost income from work — regardless of negligence — to the driver and passengers injured in an insured car, and to pedestrians struck by it.
- Preserve an innocent accident victim's right to recover additional damages from a guilty driver, including damages for pain and suffering.
- Reduce unnecessary litigation over small claims.
- Eliminate fear of catastrophic financial loss.
- Help reduce the costs of automobile accidents.

## Preserves Accountability . . .

In keeping with the fundamental principle of public policy that each member of society bears a responsibility for due care in the operation of his automobile, *Dual Protection preserves personal accountability for highway misconduct*. The negligent motorist would continue to be held financially obligated to the people he injures.

## How the Plan Works . . .

**Basic Coverage:** Under Dual Protection, the driver and passengers injured in the insured car, as well as pedestrians struck by it, would receive up to:

- \$2,000 for medical, hospital and funeral expenses.
- \$6,000 (\$750 a month) for income lost while unable to work.
- \$4,500 (\$12 a day) for other disabled persons, such as a housewife.

These benefits would be automatically included in all private passenger automobile liability insurance policies.\* They would be paid regardless of who caused the accident.

## Catastrophe Protection . . .

To provide protection against the hazard of unusually large losses, Dual Protection would make optional, low-cost catastrophe coverage available to the policyholder and his family. This insurance would supplement the basic coverage and provide the following benefits up to \$100,000 per person:

- All medical, hospital and rehabilitation expenses.
- A maximum of \$750 a month for lost income from work, or \$12 a day for other disabled persons.
- A maximum of \$750 a month or a total of \$25,000 in survivors' benefits.
- A minimum \$5,000 death benefit to the named beneficiary.

\*Some legislatures might desire to make the basic coverage optional.

## DUAL PROTECTION

## A program for improvement of the automobile accident compensation system

## INTRODUCTION

America today is undergoing a process of critical self-evaluation. Lawmakers, regulatory officials, consumer organizations, newsmen and others are re-examining virtually every institution in our society to determine whether it is operating efficiently and in the best interests of the public.

One such institution is our traditional legal system for determining who is entitled to damages for injuries suffered in automobile accidents, and the amount of damages recoverable. Various studies including the recent comprehensive investigation by the U.S. Department of Transportation have been critical of this system, and have urged improvement or reform.

While nearly everyone with an interest or stake in this question agrees that action of some kind is needed, viewpoints differ widely as to what change is indicated.

At one end of the spectrum are those who urge that nothing be done other than minor modifications of court procedures and adoption of measures to permit damage recoveries in certain situations not now recognized. Some of these proposals would, unfortunately, raise costs without bringing any offsetting savings. Thus they would cause additional, unwelcome premium increases.

At the other extreme are those who propose total abolition of the present liability system and elimination of all personal accountability for negligent driving. They would substitute a system compelling everyone to insure himself against all the consequences of injury and damage from another person's negligence. These proposals have usually been accompanied by predictions of substantial insurance rate cuts—predictions which have been challenged by your Association and others as illusory and unrealistic.

Caught in the middle of this controversy—and often bewildered by it all—stands the American public. Beseet by insurance rate increases, they are understandably receptive to proposals which promise premium reductions. Nevertheless, in recent national opinion surveys they have voiced strong support for preservation of the basic concept of personal accountability for highway misconduct, and for the right of an innocent injured party to recover both tangible and intangible damages from a guilty driver.

We do not believe, therefore, that the public wants a compensation system which rewards the wrongdoer every bit as well as his victim. Nor do we believe they would favor a system which in the name of false economy deprives the seriously injured person of his long-standing right to seek damages from a guilty party for pain, suffering and other intangible losses.

Out of the growing controversy comes this question: Is there a viable middle-ground solution to the problem—one which is responsive to major criticisms of the present system, yet does not destroy its many good features?

NAII believes there is such a middle road. In an effort to be of maximum aid to lawmakers, public officials and others considering the problem, we have developed the Dual Protection Plan, a program designed to compensate—

more injured persons' basic medical expenses and income loss;  
more quickly; and  
more efficiently

while preserving their vital rights under the existing liability system.

The overall purpose and effect of the Dual Protection Plan would be to—

Provide injured persons automatic payment of their basic economic losses, regardless of fault, up to minimum limits of \$2000 for medical expenses and \$6000 for income loss.

Assure availability to the motoring public of optional catastrophe coverage at modest cost, to raise those basic limits of medical/disability protection to \$100,000 per person, payable regardless of fault.

Preserve an innocent injured party's right to recover additional damages from a wrongdoer over and above those compensated by the basic automatic-pay coverage.

Adopt guiding standards governing damages for pain and suffering in the less serious liability cases, and defining the measure of damages for wage loss.

Improve and speed up procedures for litigating small claims; retain the contingent fee system, under court supervision.

Stabilize or reduce auto insurance premiums by attacking the causes of inflation in major cost ingredients, including fraudulent claims, the rising accident toll, and soaring auto damage repair costs.

This program is offered as a realistic means of alleviating on a state-by-state basis the major criticisms of the present automobile accident compensation system within the basic structure of that system.

Details of the Plan are discussed in the following pages.

#### I. AUTOMATIC PAYMENT OF BASIC MEDICAL/DISABILITY LOSSES

The traditional American legal liability system applicable to automobile accidents and most other accidents does not compensate all injured persons in all situations, nor was it ever intended to do so. That system undertakes only to give an accident victim a right of action where another person negligently caused his injury; also, in most states the claimant himself must be relatively free of fault. Once a right of action arises, though, the law recognizes all types of damage, including both *tangible* losses (such as medical expenses and lost earnings) and *intangible* losses (such as pain and suffering).

As applied specifically to the automobile accident picture, the existing legal system and the insurance system related to it have been criticized on the following grounds among others:

An accident victim is not assured a source of compensation of any of his losses where he is injured in a one-car accident (driver falls asleep and car strikes a tree), or in a multiple-car accident where fault is totally absent or impossible to determine.

In those instances where legal liability by a negligent third party may exist, although most claims involving insurance are settled rapidly once the facts are known<sup>1</sup>, investigation and negotiation or litigation of claims nevertheless can necessitate a lag between the time medical bills and wage losses arise and a claim is paid.

Too large a portion of the total cost of the system (insurance premium dollars plus the cost of judicial procedures) is expended in attorneys' fees and court costs, in relationship to the aggregate net recoveries by injured parties.

The insurance industry has already gone part way in responding to these problems, through the growing practice of voluntarily advancing money for medical expenses and wage loss to persons with valid third party liability claims prior to final settlement.

#### *Dual protection responds to the need*

In further response to these problems, the Dual Protection Plan will require that all private passenger automobile insurance policies include as a minimum the following automatic-pay benefits:<sup>2</sup>

Medical expense coverage paying all medical, hospital, dental, surgical and similar expenses up to \$2000 limits.

Disability coverage of \$6000 compensating net loss of income up to \$750 per month;

Benefits up to \$12 per day or a maximum of \$4,500 to other disabled persons such as a housewife, to pay for substitute help to perform services the injured person would have performed.

Medical payments will begin immediately, and disability benefits not more than two weeks after the accident. Net income loss is to be computed at 85% of gross income.

These benefits will be payable automatically, without regard to fault,<sup>3</sup> to any or all of the following persons injured in an automobile accident:

<sup>1</sup> Approximately 80% of all automobile bodily injury liability claims are disposed of within 6 months after notice of accident, and about 90% within one year.

<sup>2</sup> Resolution of the question of whether the policyholder should or should not be permitted the option of rejecting such basic coverage involves a number of important social policy considerations, such as the individual's need for protection, which must be ultimately resolved by each legislature on a state-by-state basis. Therefore while on balance preferring that this coverage be included in every policy, we recognize that some legislatures may be concerned about those persons who may have no need for this coverage. Accordingly, we will assist each such state legislature in the development of measures designed to accommodate the interests of such persons.

<sup>3</sup> The proposed statute will permit the basic automatic-pay coverage, as well as the catastrophic coverage later described, to contain exclusions of recovery by (1) a person who intentionally causes the accident, (2) a person driving or riding in a car he knows to be stolen, and (3) a person committing a felony or seeking to elude lawful arrest by a police officer. The legislature may also wish to empower the insurance commissioner to approve exclusions covering other specified types of extreme antisocial conduct.

The policyholder.  
 Members of his family.  
 Permissive users of the insured car.  
 Guest passengers in the car.

Pedestrians struck by the car (in accidents within the state).

The policyholder and his family will be protected not only in accidents involving the insured car, but where injured either while occupying or by being struck by a car that is not covered by similar automatic-pay coverage.

Well over 90% of the persons injured in automobile accidents incur medical and related expenses of less than \$2000 and income loss of less than \$6000. This plan will therefore assure that the vast majority of auto accident victims will receive immediate payment of all their medical bills, regardless of the type or cause of accident, plus income loss payments up to the prescribed minimum limits. Motorists may also elect to purchase the high-limits catastrophe coverage described later.

#### *Dual protection provides primary coverage*

Except as to injuries covered by workmen's compensation systems, payment under the basic automatic-pay coverage will be made irrespective of whether the injured party receives benefits from other sources, such as employer wage continuation payments, unemployment compensation payments or accident and health insurance. To help stabilize costs, however, an offsetting allowance will be made for benefits payable under this coverage in any liability suit the injured party may bring against a third party. Such benefits will also be offset against any claim by the injured party under uninsured motorist coverage applicable to the same accident.

#### *Interim availability of automatic-pay medical/disability coverage*

A number of NAII member companies have already pioneered on a voluntary basis the offering to each of their policyholders of basic medical/disability coverages similar in concept to what is here proposed.

Pending legislative enactment by the various states of such a program in statutory form, and to make this valuable protection more widely available, NAII has formally recommended that all of its companies voluntarily offer the types of coverage here proposed.

## II. MAKE CATASTROPHE LOSS COVERAGE AVAILABLE TO ALL MOTORISTS

One of the problems highlighted by the Department of Transportation study and other recent studies of the existing compensation system governing automobile accidents is the plight of those seriously injured persons who do not have a source of insurance or other funds available to cover all of their out-of-pocket medical bills and wage losses. These would include:

Those who have no legal right of recovery against a third party, such as victims of single car accidents and of multi-car accidents where fault cannot be proven.

Those with a valid right of recovery, but with economic losses so large as to exhaust the liability insurance limits and assets of the party at fault.

The Dual Protection Plan responds to this problem in what we believe to be the simplest and most reasonable method available—a method which does not overturn the present system and deprive the seriously injured of valuable existing rights and remedies.

First, as noted, all private passenger automobile insurance policies will be broadened to contain basic automatic-pay medical/disability coverage affording at least \$2000 medical benefits and \$6000 income loss benefits. Not only will this largely take care of the economic losses of the vast majority of accident victims who suffer only minor injuries, but it will provide a "benefit floor" for those with very serious injuries, and, very importantly, an immediate source of funds to start paying doctor bills and other out-of-pocket expenses.

Secondly, the plan will require that there be offered with every private passenger automobile insurance policy a new form of supplemental "Catastrophe Loss Coverage" applicable at least to the policyholder and his family. Benefits under this coverage will begin when the benefits under the basic coverage have been exhausted, and will compensate all the following types of expenses and losses up to an aggregate \$100,000 limit per person per accident, regardless of the type or cause of the automobile accident:

Medical, hospital, dental, surgical and related expenses.

Net loss of income up to limit of \$750 per month for inability to work, or, in the case of a non-income producer, up to \$12 per day for expenses incurred for services in lieu of those the injured person would have performed.

In death cases, (1) survivorship benefits to dependents of up to \$750 per month subject to a \$25,000 limit, plus (2) a death benefit of \$5,000 payable to a named beneficiary.

While the cost of this new Catastrophe Loss Coverage will vary somewhat between different areas, classifications and companies, it is estimated that the average premium for an entire motoring family will approximate 6¢ per day—the price of a postage stamp. That average premium may be even smaller if the coverage is made excess over other sources of benefits, as is permitted but not required under the plan.<sup>4</sup>

For motoring families which do not have other comprehensive medical/disability insurance programs, this optional coverage will afford massive protection against the motoring hazard at very nominal cost. Even those families which do already have a fairly broad measure of protection from other sources may well wish to supplement that protection with the purchase of this coverage on an excess basis. For people in both categories the coverage will provide a simple, inexpensive way to close any existing protection gap.

### III. PRESERVE PERSONAL ACCOUNTABILITY FOR MISCONDUCT ON THE HIGHWAYS

Some extreme proposals for "reform" of the present system would in fact totally destroy it and substitute a system where the wrongdoer and his victim would be treated exactly alike. Such proposals would abolish the age-old principle of law requiring each citizen to use reasonable care not to injure his fellow citizen, and the counterpart rule holding him personally accountable if he breaches that duty. They would, in other words, completely immunize a wrongdoer from any legal action by his victim for damages—provided the injury is inflicted by automobile.

We see no reason why a person should be immunized from generally prevailing rules of personal accountability the moment he takes his automobile out of the garage. Motoring is one of the prime areas where personal accountability should be retained and enforced. To abolish it would constitute an implied public policy declaration by the legislature that the state no longer really cares how badly one maims his fellow citizen, so long as he does it by car. Such a step would have a seriously damaging impact on driver attitudes and would also tend to destroy motivation for strong traffic law enforcement, with a resultant rise in accidents.

The Dual Protection Plan we propose *preserves the principle of personal accountability*. More than that, our Association is bending every effort to find ways of increasing driver responsibility and strengthening law enforcement, thereby reducing the accident toll.

### IV. KEEP THE PRIMARY LOSS BURDEN ON THE WRONGDOER

A basic concept which has emerged from the public's concern with auto insurance and accident costs is that, to the largest extent possible, "motoring should pay its way". Acceptance of this premise also requires that motorists creating the greatest hazard bear a greater share of the insurance premium burden, as is generally the case under the present system.

This principle would be destroyed by extreme types of "reform" plans which abolish the fault concept and thereby thrust on careful drivers the full burden of insuring themselves against all the losses inflicted by the more hazardous drivers. Dual Protection, however, will preserve this important principle.

Under the Dual Protection Plan, the insurance company issuing the basic automatic-pay coverage immediately pays medical/disability benefits to persons injured while occupying or being struck by that car, whether or not the accident is someone else's fault. The insurer paying those benefits is then entitled to reimbursement from a negligent third party. Reimbursement will occur either by mandatory intercompany arbitration proceedings (if the third party is insured with an insurance company licensed in the same state) or by conventional sub-

<sup>4</sup> As with the basic automatic-pay coverage, the Catastrophe Loss Coverage would be made excess over any applicable workmen's compensation benefits, and sums payable under such coverage would be credited against benefits recoverable under Uninsured Motorist Coverage.

rogation procedures.<sup>5</sup> Thus, those vehicle owners and drivers causing a relatively greater share of the losses will continue to bear a relatively larger share of the total insurance premium burden.

#### V. ESTABLISH GUIDING STANDARDS GOVERNING DAMAGE AWARDS

##### A. Awards for pain, suffering

Among other frequently voiced criticisms of the present system governing compensation of injuries in automobile accidents are these:

Too much of its total pay-out goes for so-called "intangible" damages and not enough for purely economic losses.

Grievously injured persons with valid claims sometimes fail to recover all their economic losses, while settlements and awards to those with minor injuries average several times their economic losses.

Intangible damages are so nebulous as to be difficult or impossible to measure objectively.

Proponents of total "no-fault" programs use these arguments as a springboard for urging total abolition of all right of recovery for pain, suffering and other intangible elements of damages.

While acknowledging that some remedial action is needed in the area of intangible damages, NAII believes that total or substantial elimination of this basic right of recovery would be unwarranted and contrary to the interests and desires of the American public. It would mean that—

A young mother badly crippled for life by a reckless driver would receive nothing for continued pain and anguish and for the severe difficulties encountered in rearing her children;

A child who loses an arm or leg would receive nothing for the resulting disruption of normal occupational, athletic and recreational opportunities and pursuits.

A girl suffering serious disfigurement would receive nothing for a lifetime of humiliation, ridicule, and social handicap.

Nothing would be recoverable, either, for destruction of one's manhood or womanhood, or for the loss of companionship of a loved one, or, except to the exact extent of any provable pecuniary costs, for loss of sight, hearing, or any of the other vital senses.

We do not believe the public will—or should—stand still for any measures that would take away intangible damages in these and similar situations of serious injury. Our conclusions in this regard are supported by the results of several comprehensive public attitude surveys.

Governing standards of some kind for pain and suffering awards in minor injury cases are needed, however, to help stabilize or reduce the cost of the system as well as respond to the other problems just mentioned. The Dual Protection Plan proposes such standards to apply to certain cases where liability claims are lodged or suits filed against motorists who are covered by liability insurance policies containing basic automatic-pay coverage.<sup>6</sup>

Under those standards, awards for pain, suffering, mental anguish and inconvenience would be limited to an amount equal to 50% of the first \$500 of reasonable medical and hospital treatment expenses and 100% of such expenses over \$500.

No limitations would apply, however, to cases of death, permanent total or partial disability, disfigurement or loss of limb, or other special circumstances shown to involve actual, substantial pain and suffering.

Under this proposal, damage awards for pain and suffering in the case of seriously injured persons such as those in the foregoing examples will continue to be determined exactly as they are at present, without any statutory yardsticks. Awards to persons with less serious injuries involving no permanent

<sup>5</sup> The Plan does not make any specific provision either requiring or preventing subrogation under the optional Catastrophe Loss Coverage; it is left to the individual insurance company to decide whether to provide for a right of subrogation, subject to the laws of the particular state.

<sup>6</sup> It is proposed that the cost-saving benefits of these standards governing awards for intangible damages shall not be extended to those categories of defendants who have not purchased or otherwise been covered by a liability policy containing the prescribed automatic-pay coverage. Thus, the existing legal rules and procedures for determining damages for pain and suffering would continue unchanged for any liability claim or lawsuit against (1) an uninsured motorist, (2) a commercial vehicle (unless basic automatic-pay coverage was voluntarily purchased), or (3) an out-of-state vehicle not carrying a liability policy containing basic automatic-pay coverage.

complications or other special circumstances, though, will be subject to the formula.

#### *B. Income tax factor in liability awards for loss of earnings*

At the present time, damage awards for loss of earnings in liability actions are not subject to income taxes. A person who has been awarded such damages actually receives a windfall, because his award is computed on the basis of gross earnings rather than the "take home pay" he would have received had he not been injured. This overpayment can be sizeable where loss of earnings represents a substantial part of the claimant's damages.

To rectify this discrepancy, and again because of the need to achieve every economy reasonably possible in the automobile injury reparations system, we propose that damage awards for loss of earnings in liability cases be subject to an offset of 15% for the income tax that presumably would have been payable if the earnings had actually been realized. The statute would clearly provide, however, that if the claimant can establish that his earnings would actually have been subject to a smaller income tax rate, or to no tax at all, the tax offset would be reduced accordingly or completely eliminated.

#### VI. IMPROVE PROCEDURES FOR DISPOSING OF CLAIMS AND LAWSUITS

While most claims arising out of automobile accidents are settled within a relatively short period and without necessity of litigation, delay does remain a problem in some instances and areas. It should be noted that delay in many cases is not the fault of the defendant or his insurer. It may, for example, result from lack for adequate or timely information from the claimant as to the nature of his injuries and medical treatment. Or, where a lawsuit is filed, it may be delayed by the backlog of cases that have glutted the court docket or the lawyers' dockets.

For a number of years, NAII and its member companies have been directing their efforts to finding means of streamlining and otherwise improving both the claim settlement process and the judicial process, so as to eliminate or minimize unnecessary delays and other sources of friction occurring at any points in the system, for any cause.

##### *Advance payment procedure*

Thus, NAII members have been in the forefront of those companies employing the advance payment procedure in cases of probable liability on the part of their policyholders. Money is immediately and voluntarily advanced to the injured third party to cover medical bills, wage loss and other expenses; no release is required—only a gentlemen's understanding that if suit is ultimately brought the sums advanced will be credited against the amount demanded.

Through the increasing use of this technique in recent years hundreds of millions of dollars have been put into the hands of accident victims *at the time needed*. Just a few of the many examples of its use are listed in the attached excerpt from the 1968 treatise "Advance Payments in Liability Claims" by Buchheit, Young and Kurtoch.

The legal implications of advancing monies voluntarily without taking a release may constitute some deterrent to even fuller use of the advance payment process in some areas and situations. Therefore, the Dual Protection Plan includes a proposed statutory provision for those states which do not already have one, to make it clear, among other things, that voluntary advance payments shall not be construed as an admission of liability by the insurer or its policyholder, and to assure that sums so advanced will be credited against any recovery in a lawsuit.

##### *Voluntary claim guiding principles*

Several years ago, in furtherance of its member companies' policy of providing the best possible service to the insuring public and to automobile accident victims, the NAII adopted and implemented the attached Guiding Principles Relating to Automobile Insurance Claims. These Principles, which constitute a summary and restatement of long-standing good practices by claimsmen, were developed and approved by this Association's Claims Committee and Board of Governors and distributed to our entire membership in January 1969. They now constitute an important part of the basic policy of this Association and its membership.

### *Expedite small claims*

NAII recognizes that notwithstanding voluntary efforts such as these by insurers to improve and expedite the claim settlement process, problems remain which call for further steps. The sheer number of auto accidents and the necessity for determining their cause and evaluating the resulting injuries and damage occasions some delays, especially where disagreement arises as to either of those issues.

Critics of the present system have emphasized the fact that viewed both from the *time* standpoint and the *cost* standpoint, the system is least efficient where it involves litigation of the *smaller* cases—those entailing minor injuries, or no injuries but just property damage. We believe that the time and expense expended in the trial of a lawsuit under our traditional judicial process can, for example, be justified in a controverted case involving a claim of tens or hundreds of thousands of dollars for alleged permanent disability. But it is wasteful to have to invoke the same costly and time-consuming procedures for the resolution of every disputed claim for a few hundred or thousand dollars.

Again, the solution does not necessitate scrapping the whole system as some would advocate. It can be achieved by remedial steps within the basic structure of the system.

As noted earlier, for the vast majority of automobile accident victims (including many now barred from recovery) the Dual Protection Plan by providing automatic payment of basic medical/disability benefits will eliminate any problem of delay in obtaining funds for payment or reimbursement of economic losses for injuries. Such benefit payments will be made promptly upon receipt of medical bills and wage loss information, without awaiting any determination as to fault or cause of accident.

Property damage to vehicles will continue as at present to be compensated from two sources; (1) by claim against the vehicle owner's own collision coverage; or (2) by claim against the party at fault, if any, and in turn the latter's property damage liability insurance coverage. Like the proposed automatic-pay medical/disability coverage, collision coverage pays off immediately, regardless of fault. The insurer then has a right of reimbursement from an at-fault third party, if any, and his liability insurer.

Thus, both as to vehicle damage losses and basic medical/disability losses, the great majority of automobile accident victims will be compensated promptly and without regard to cause of accident. The issue of which insurance company should ultimately bear those losses in multiple-car accidents will subsequently be resolved either by intercompany arbitration (a very economical process already widely used by the insurance industry) or where necessary by subrogation action. Most important, the basic benefits are paid to the claimant first and then the companies decide between themselves which one should bear the loss.

There will of course remain to be disposed of through the customary settlement procedures, or through litigation where necessary, (1) claims for intangible losses and for economic losses in excess of the basic automatic-pay benefits, (2) claims for property damage not compensated by collision coverage, and (3) injury and death claims arising in motor vehicle accidents not covered by private passenger automobile liability policies issued in the enacting state.

### *Small claims arbitration*

To aid in the prompt, economical disposition of the smaller claims in these residual categories which cannot be resolved by the settlement process, and especially for use in states with a court congestion problem, the Dual Protection Plan includes a proposed statutory provision authorizing creation of a small claims arbitration system to handle all cases up to \$3,000 in amount.<sup>7</sup> This measure is patterned after the highly successful Pennsylvania law under which many thousands of small claims (both third party liability cases and other types of civil cases) have been removed from overburdened court dockets and processed quickly and reasonably.

As an alternative to this approach, our Association would give support to the creation of special small claims courts designed to accomplish the same general objective as the Pennsylvania arbitration plan.

### *Disclosure of medical evidence*

Prompt settlement of claims is sometimes delayed because the defendant and his insurer are denied access to all the information they reasonably need to evaluate the claimant's injuries and validate medical treatment expenses. In

<sup>7</sup> Or such other "threshold" level a state legislature may see fit to establish.

some instances such information is withheld until a lawsuit has been filed and trial commenced.

To alleviate this problem, the Dual Protection Plan provides that persons claiming damages or policy benefits for injuries sustained in an automobile accident shall if requested consent to physical examination by a doctor supplied by the defendant or the insurer. It also requires such claimants if requested to provide any information reasonably needed concerning the injuries claimed and the treatment undergone.

#### *Other remedial steps*

In addition to the steps just described, NAII and its members are prepared to support any specific action or measures needed locally to eliminate special problems that may cause or contribute to unreasonable court delay. Our staff, committees, and company officials have given a great deal of study to the court congestion problem and have initiated or participated in projects in various areas designed to alleviate it. We will continue to work in every way to help make the judicial system operate fairly and efficiently.

### VII. COURT SUPERVISION OF CONTINGENT FEES

One of the most controversial features of this country's existing legal system is the long established practice by plaintiff lawyers of handling most personal injury cases on a contingent fee basis. Under this arrangement no fee is paid or payable unless a settlement or judgment is obtained. In the event of recovery the lawyer receives a percentage of the total award recovered; that percentage often amounts to 33⅓% and sometimes more.

Proposals have from time to time been advanced either to prohibit contingent fee arrangements completely, or to restrict their use to cases involving indigent claimants.

There have unquestionably been some abuses within the contingency fee system. However, contingency fee arrangements do serve the worthwhile purpose of assuring an injured person the availability of legal counsel without the necessity of advancing or committing himself to a substantial fixed fee or retainer.

The Dual Protection Plan calls for retention of the contingent fee system, but with somewhat closer court supervision: It provides for adoption by the courts of rules prescribing maximum contingent fee schedules applicable to all motor vehicle accident cases under their jurisdiction. A lawyer could file for a higher fee allowance from the court in any case where he believes those prescribed are not adequate. Unlike some other programs, our plan does not itself specify any maximum percentage figure; that is left to the courts to prescribe.

Precedent for such regulation of fees can be found in the court rules in several states, as well as in the Federal Tort Claims Act. The probate courts in many states also regulate and require disclosure of fees in probate cases.

We believe that reasonable regulation of contingent fees as here proposed in states lacking such specific procedures will prove beneficial both to the public and to the legal profession. It is our further belief that this type of regulation will elicit support from within the bar itself.

### VIII. CURB INFLATION IN MAJOR PREMIUM COST INGREDIENTS

While Dual Protection is intended, among other things, to stabilize or reduce the cost of automobile insurance, the NAII is aware that truly dramatic premium savings can only come as and when progress is made in curbing the major underlying cost ingredients of the insurance premium dollar. Chief among these ingredients are the highway accident spiral and the upsurge in costs of treating human injury and repairing damaged automobiles.

With this in mind, the NAII and the safety organizations it supports have been engaged for many years in intensive effort to reduce accidents and decrease injury severity through research, public education and the fostering of strong traffic laws and enforcement. In addition to individual company efforts in the traffic safety area, NAII companies collectively have provided the major share of the operational budget of the Insurance Institute for Highway Safety, an independent, non-profit organization dedicated to the reduction of highway accident loss.

### *Attack the larger half of the loss picture*

Though the primary emphasis of our efforts must continue to be focused on curbing deaths and injuries, the greatest opportunity for effecting significant premium savings lies on the material damage side of the loss dollar. Today, almost two-thirds of the auto insurance premium dollar for a typical package of insurance including a late model vehicle is spent for car damage coverages. More than 10 times as many people incur damage to their cars as incur personal injuries!

For these reasons, the NAII has been in the forefront of efforts to stabilize the cost of vehicle damage insurance through programs directed at the improvement of automobile design and the reduction of auto damage repair costs.

Our Association in recent years has been continually spotlighting—in Congressional hearings and elsewhere—the four basic causes behind the upsurge in material damage losses: speed, horsepower and high-performance cars; the spiral in automobile prices and the prices of crash repair parts; the increases in repair garage charges, and the extreme vulnerability of today's automobiles to costly damage even in low-speed crashes.

This constant public airing of a critical problem has helped to touch off an encouraging chain of events. Auto dealers have reported a decline in the sale of "hot" cars; auto manufacturers announced they were shelving certain plans they had for further souping up the horsepower of some of their new models, and several of the major car-makers have said they will install functional bumpers on their cars for 1973 and beyond.

NAII has also been engaged in pioneering research programs designed ultimately to cut the costs of repairing damaged automobiles. One of these projects is being conducted under NAII sponsorship by the Cornell Aeronautical Laboratory. Its purpose is to determine if the damage to a car in a given crash situation can be analytically projected before the crash takes place, and even before the car is put on the market. If this concept proves feasible, as preliminary indications suggest, then cars can be indexed according to their relative vulnerability to damage and their cost to repair. Premium rates, in turn, could be based upon such an index.

In addition, the NAII has been devoting intense study to the need for establishing an industry-sponsored research center whose purpose would be to pioneer new cost-saving techniques in the field of automobile crash repair. A team of NAII staff and member company representatives recently traveled abroad on two occasions to study the operations of the Motor Vehicle Crash Research Centre in Britain, and a similar facility in Sweden. Though they have been in existence for only a short time, these unique facilities have already produced a number of advances in repair technology. The NAII is continuing to explore this concept to evaluate its feasibility and practicability in the United States.

Our Association is optimistic that through projects and studies of the kind just described, we will be able to make a substantial contribution to the goal of reversing the rising trend of automobile insurance costs.

### *Crack-down on claim fraud*

As mounting loss payments exert increasing upward pressure on automobile insurance rates, the insurance business must devote extraordinary efforts to eliminate every element of unnecessary cost. One serious and regrettable continuing source of waste is claim fraud, a scourge which adds tremendously to the insurance cost burden borne by the American public.

Programs to expose and combat claim fraud have long been carried on by individual insurance companies and organizations. In order to increase the effectiveness of such actions NAII and the other leading casualty insurance trade associations have recently participated in the creation and staffing of a separate new instrumentality, the Casualty Insurance Fraud Association (CIFA), to deal solely and specifically with the problem. CIFA will aid and complement the work of overburdened law enforcement agencies nationally by investigating suspected fraudulent activity in automobile and general liability insurance situations. It will give priority to exposing and bringing about the prosecution of organized auto accident fraud rings, which ruthlessly pick the pockets of the insurance-buying public by countless millions of dollars annually.

To provide a more adequate statutory framework for prosecution in states now lacking strong and explicit laws on the subject, the Dual Protection Plan proposes legislation imposing stringent penalties for conviction of any type of claim fraud arising out of automobile accidents. It calls for a fine of up to \$500

or imprisonment up to one year, or both, upon conviction of a first offense involving a claim up to \$100 in amount, and a fine of at least \$500 or imprisonment up to 10 years, or both, for convictions of a fraudulent claim of over \$100 or for a second or successive conviction regardless of amount of claim.

#### CONCLUSION

By way of summary, the Dual Protection Plan will :

Compensate the basic economic losses of the vast majority of automobile accident victims, including many now receiving nothing from the accident reparations system.

Afford optional protection against the hazard of catastrophic economic loss, at nominal cost.

Pay such benefits immediately when needed, without regard to questions of fault.

Preserve the innocent injured party's right to recover additional damages against a wrongdoer.

Adopt reasonable standards for ascertaining damages for pain and suffering in the less serious cases.

Retain personal accountability for negligent driving, and keeping the major share of the premium cost burden on those who present the greatest hazard on the highways.

Increase the speed and efficiency of the present system, particularly as to smaller claims and losses.

Help relieve court congestion.

Stabilize or reduce automobile insurance premiums and cut the overall cost of the accident reparations system.

#### *State-by-State implementation*

NAII believes that determination of the rights, responsibilities and compensation of individuals involved in automobile accidents should remain a matter of state law, as at present. The Dual Protection Plan is designed for that purpose, and is readily adaptable to the specific problems and statutory settings of different states. It is submitted as a program of evolutionary reform which will bring the public an increased measure of protection against economic loss without sacrificing their vital rights and valuable benefits under the present system.

Additional information about the Plan is available upon request.

---

#### EXCERPT FROM "ADVANCE PAYMENTS IN LIABILITY CLAIMS"

(By Buchheit, Young, and Kurtock—October 9, 1968)

The following examples submitted by contributing companies will assist the reader in understanding the scope of advance payments in present practice.

1. A Canadian insured, operating his vehicle on a gravel, wet road, failed to negotiate a curve and struck a tree stump. His passenger, a 33 year old waitress, sustained a fractured femur, with open reduction and subsequent infection. Her total period of hospitalization was 153 days. Her husband had been unemployed, and the bank was threatening foreclosure proceedings on their home mortgage. The adjuster paid off the mortgage as well as the hospital and medical bills, in an advance payment of \$5,800. The mortgage officer of the bank was an enthusiastic promoter of the company and its advance payments program, and the action taken was a topic of discussion in the community for many weeks thereafter.

2. Claimant, a minister, sustained an injury to his larynx, and while recuperating, was unable to talk above a whisper. A replacement minister was unavailable. The adjuster purchased an amplifier system for the church which was received by the minister and congregation with gratitude. The claim was concluded for actual expenses incurred, and the amplifier system was donated to the church.

3. One claim involved a serious chartered bus accident on a snow drifted mountain road, resulting in three deaths, three serious injuries, and thirty-five minor personal injury claims. All of the claimants were soldiers on their way home for Christmas. The company claims representative met with the commanding officer of the army base and arranged for a charter flight, with advance payments to each soldier to cover his personal expenses, plus air line tickets for his

return home, and return to base. The General Staff of the army at the Pentagon in Washington, D.C. were most complimentary of the manner in which this case was handled.

4. In a remote section of the Northwest, a young man sustained severe and disfiguring facial injuries as a result of an accident arising out of the insured operator's gross negligence. His parents were of modest financial means and the carrier arranged to transport him periodically to a large city where he was attended by one of the city's top plastic surgeons. Total funds advanced exceeded \$10,000. The ultimate results were excellent, and the young man subsequently invited the adjuster to his wedding.

5. A college senior was killed. In attempting to effect an adjustment with the parents of this boy, the adjuster realized that the parents were not interested in financial compensation as such. After some consideration, the adjuster proposed establishing in perpetuity a scholarship at the university in the name of the deceased. He also purchased a permanent trophy to be maintained at the deceased's high school from which he graduated as valedictorian of his class. The names of scholarship awardees will be inscribed on the trophy.

6. A sixteen year old boy was seriously injured by an automobile while riding a motorcycle. He sustained comminuted fractures of the right femur and of both bones of his left forearm. Faulty healing required a long period of disability and it was feared that the boy might never return to high school. In addition to advancing the money to pay the medical and hospital bills, the company arranged to have a two-way speaker system installed between the hospital room and the classroom. The boy not only hears what goes on in the classroom but he recites and takes part in classroom discussion.

7. Over \$72,000 was advanced by one company to a quadriplegic. A rehabilitation program caused restoration of some function and the injured party is now able to take care of herself without round-the-clock nursing service. The case was finally settled by the purchase of an annuity.

8. A fifty-two year old man sustained serious back injuries. After advance payments had begun, the claimant retained an attorney through whom payments were continued. The attorney and the adjuster worked with the State Rehabilitation Board and succeeded in putting the injured party through an educational program which resulted in full rehabilitation.

9. A twenty year old girl sustained serious fractures of both femurs. Repeated surgical procedures were required. Payments were advanced in excess of \$7700, including over \$1,000 for the services of a Christian Science practitioner and over \$800 for telephone communication with this practitioner who was located in another state. Included in the total advanced was a special tuition allowance to permit the claimant to keep up with her education while disabled. In this particular case, a final settlement offer was made at which time the claimant consulted a prominent attorney. His recommendation was that the settlement offer be accepted.

10. A fifty-seven year old executive sustained an extremely severe injury to the knee in 1966, and has been unable to work since. A total of \$17,736 has been advanced to date, and the company is now considering a choice of annuity arrangements together with a policy which will take care of further medical or surgical expenses resulting from the injury.

11. A fifteen year old girl sustained a skull fracture, comminuted fracture of the left femur and other injuries. She was in a coma for three days and her life was in danger. The company, notwithstanding a low policy limit, began paying medical bills, paid the private duty nurses weekly, and paid the mother \$100 a week so that she could quit her job—relocate near the hospital and help her daughter recover.

12. A twenty year old married truck driver sustained an injury which required the amputation of a leg. The company advanced hospital and doctor bills and net take home wages. A lawyer was engaged by the family shortly thereafter and the advance program was continued through him. The case was ultimately settled in what the company believes was a very favorable climate produced by their willingness to give immediate assistance.

13. A fifteen year old girl sustained severed ligaments to her hand and nerve damage. Hysteria was tightening the hand into a mere claw. The local physician recommended the attention of specialists. The girl was immediately sent to a Hand Rehabilitation Clinic at a nearby university, undergoing surgery twice, and emerging with only a 15% residual disability. The family was one of moderate means and could not have afforded this care without the assistance of the insurance company.

14. An automobile occupied by two young people was hit head-on by the insured. Both claimants were hospitalized. The parents arrived from out of town and the adjuster assisted them in registering at a motel, arranged airplane tickets, purchased new clothing for the injured claimants, took care of the hospital bill, had the automobile repaired and paid for it, and finally took the family to the airport for their return home.

15. The claimant, a laboring man traveling on motorcycle, sustained a badly crushed leg which the local physician felt would necessitate amputation. An offer by the adjuster to move the claimant to a large medical center some distance away was gratefully accepted. The best orthopedic talent was put on the case and the leg was saved. During the period of convalescence, the adjuster made arrangements to have the wife near the center and took care of her transportation and room and board. A total of \$17,000 was advanced and final settlement was made directly with the family for a substantial additional sum of money. Total treatment, including extensive therapy and rehabilitation, took approximately two years.

16. A twenty year old married claimant was struck head-on by the insured's tractor-trailer. He sustained numerous serious and disabling injuries. Advance payments were begun, and continued after claimant obtained legal representation. In less than eight months, a total of almost \$11,000 was advanced for medical, wages, and incidental expenses, plus \$1200 for damage to the automobile. The case was settled without litigation.

17. A fifty-seven year old married female suffered fractured legs, fractured arms, and a fractured nose, jaw and ribs. Before the accident she operated a gift shop. The husband had to leave his job and run the shop during her convalescence. Advances of approximately \$5,000 were made for hospital expenses not otherwise covered, lost wages and incidental expenses. The case was settled directly with the claimant for a sum very close to the substantial policy limit.

18. An elderly woman sustained a fractured hip in a fall and was hospitalized and later placed in a rest home for convalescence. Her principal concern was the possible loss of her small apartment because of her inability to pay for rent and utility. The adjuster saw that these expenses were taken care of monthly, and presumably at this date the claim has been disposed of amicably.

19. A college football player, seriously injured in a crosswalk, lost his football scholarship. The company advanced his tuition and other expenses to permit him to continue college, prior to settlement. The young man has now graduated from college and the case brought to a satisfactory conclusion.

20. A claimant, injured in a fall, required physiotherapy and was reluctant to make continued visits to a doctor's office. The claim representative advanced him \$100 to take out a membership in a local health club which provided the needed facility. The claimant later returned \$30 of the advance to the claim representative, advising that the membership was only \$70.

## GUIDING PRINCIPLES RELATING TO AUTOMOBILE INSURANCE CLAIMS

### INTRODUCTION

The National Association of Independent Insurers and its member companies believe that the administration of automobile insurance claims is the ultimate service and product of automobile insurance. The claims function must be performed with integrity within the framework of the American legal and judicial system, governmental regulation, and the contractual provisions of automobile insurance policies. We continue to conceive our objective in the disposition of automobile claims to be the administration of justice in the day-to-day affairs of men by the application of these factors to each individual occurrence.

Because of our contractual relationship, we owe a loyalty and duty to those whom we insure. We represent them, and we act in their interests. It is our duty to act efficiently and economically. In addition to our contractual duty to our insureds, we recognize our obligation to process claims in such manner as to serve the social and economic welfare of the American public. In keeping with this obligation, many of our companies are employing various new techniques in payment and settlement such as payments in advance of final settlement, rehabilitation and open-end releases.

Now, therefore, we reaffirm and publish these Guiding Principles relating to Automobile Insurance Claims. They are of necessity general in scope and as in

the case of any other general principles must be read in the context of the law and practice in the state or area in which business is conducted. We declare it to be our earnest intent and purpose to:

1. Conduct claim investigations in a diligent search for the facts as promptly as possible.
2. Contact claimants promptly as to an accident initially reported by an insured in which there is reason to believe the insured may be legally liable.
3. Contact the insured promptly as to an accident initially reported by a claimant, and continue processing the claim.
4. Determine the amount of automobile and other property losses promptly and fairly.
5. Respond promptly, when a response is indicated, to all communications from insureds, claimants, attorneys and other interested persons.
6. Give a prompt, courteous and forthright explanation to each claimant as to the company's position with respect to his claim.
7. Conclude each claim, large or small, on the basis of its own merits, in the light of the facts, the law, and the coverage afforded.
8. Pay meritorious property damage claims promptly without requiring simultaneous settlement of bodily injury liability claims.
9. Investigate coverage questions expeditiously; inform the insured and claimant of the companies' position as promptly as possible; litigate only meritorious policy defenses.
10. Assist in the physical rehabilitation of injured persons where such procedure is indicated by the injury, the liability and the policy provisions.
11. Facilitate, in the case of claims involving more than one company, the prompt and fair disposition of the claim, later seeking to resolve any controversy between insurance companies without recourse to the courts.
12. Co-operate in every proper way, when a claimant files suit, to secure prompt disposition of the litigation.
13. Review at the management level all complaints received concerning claim handling.
14. Adhere to the ethical standards set forth in the Statement of Principles adopted by the National Conference of Lawyers, Insurance Companies and Adjusters.
15. Seek and support new methods designed to provide improved claim services for the public.

(Whereupon, at 5:45 p.m., the hearing was adjourned to reconvene at 10:00 a.m., May 10, 1971.

# AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

MONDAY, MAY 10, 1971

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met, pursuant to recess, at 10 a.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart presiding.

Present: Senators Pastore, Hart, Moss, Cotton, Pearson, Griffin, Baker, and Stevens.

Senator HART. The committee will be in order.

Our first witness this morning, and I welcome him, is a distinguished citizen of Michigan, the vice president of Ford Motor Co., Mr. John J. Nevin.

Mr. Nevin, you were good enough to furnish us in advance with your statement. I apologize, but over the weekend I have not had a chance to read it. We will order it printed in full in the record, and if there is any extension you care to make—footnoting or summation—feel free to do it.

## STATEMENT OF JOHN J. NEVIN, FORD MOTOR CO. VICE PRESIDENT, CONSUMER SERVICE DIVISION, THE AMERICAN ROAD, DEARBORN, MICH.

Mr. NEVIN. Mr. Chairman, my name is John J. Nevin; I am a vice president of Ford Motor Co. Ford welcomes this opportunity to express its views on S. 976.

The Senate Commerce Committee has sought, on several occasions in recent years, to enhance the knowledge and the freedom of choice of the consuming public through legislation. The sponsors of S. 976, without doubt, have a similar purpose.

Ford is unable, however, to support many of the provisions of S. 976. S. 976 is concerned largely with the repairability and damageability characteristics of automobiles. It is similar to safety and air pollution control legislation in that it would permit or require administrative actions that might add significantly to the selling prices of automobiles. It differs, in our opinion, from safety and air pollution control legislation in that it deals with vehicle characteristics that are more the concern of the individual buyer than the concern of the public in general.

S. 976 goes far beyond the goal of enhancing the knowledge and the freedom of choice of the consumer and proposes a vast new system of regulation for an industry already thoroughly subjected to regulation. Standards promulgated under the authority of the Safety Act of 1966 and the Clean Air Amendments of 1970 will require a virtually

(1211)

complete reengineering of motor vehicles during the next few years. Our engineering resources are even today overtaxed by effort to comply with air pollution and safety standards that have been assigned the highest level of priority. To conserve these resources we have taken action to severely limit our efforts on other engineering and design programs.

Ford accepts the desirability and, in fact, the necessity of adding costs to automobiles in order to accomplish public air pollution and safety objectives. We believe, however, that new legislation requiring or authorizing actions that might affect the prices of new cars should be adopted only after giving full consideration to the possible cumulative impact on car prices of the proposed legislation and of legislation that has been previously enacted.

Ford also accepts the desirability and necessity of limiting the consumer's choice by establishing compulsory vehicle standards that affect the safety or pollution characteristics of a vehicle. We believe, however, that compulsory standards may not be desirable when those standards affect only the repairability or damageability characteristics of a car. The establishment of such standards could, in our view, unduly restrict the choices available to the consumer.

In summary, Ford believes that S. 976 would require that engineering and research resources in the automobile industry be directed from high priority air pollution and safety programs, would permit the promulgation of regulations that might add significantly to new vehicle prices, and would unnecessarily restrict customer choice in the automobile market. For reasons that will be reviewed in the material to follow, Ford concludes that S. 976 offers no substantial promise of offsetting reductions in insurance and repair costs for the American consumer.

If I may move to the discussion of the individual sections of the bill and deal first with compilation and distribution of data on comparative damage susceptibility.

Proposed section 125 (a) directs the Secretary of Transportation to:

\*\*\* develop and prescribe by regulations issued not later than July 1, 1972, a system of tests and testing procedures designed to allow a determination and comparison of the susceptibility to damage of passenger motor vehicles involved in traffic accidents which reasonably may be anticipated to occur at normal speeds and under normal operating conditions, including, but not limited to, collisions at speeds of 5, 10, and 15 miles per hour.

Proposed section 126 provides that:

\*\*\* no manufacturer shall sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States—any passenger motor vehicle manufactured on or after January 1, 1973, unless production models of the make and model of such motor vehicle have been tested in accordance with the regulations promulgated by the Secretary under section 125 (a) of this Act.

The bill would require the testing of production models rather than preproduction prototypes. Normally, we may have as few as 45 days between the start of production and the public introduction of the new model. The Secretary would probably want, and in regulations issued under the provisions of the 1966 act he has required, submission of performance data at least 30 days prior to introduction day so that he would have time to review the data before it is provided to customers at the time the new models go on sale. We would, therefore, have as little as 15 days from the start of production to the time at which

we would be required to complete testing and report results. The alternative would be to stockpile large quantities of new models for some indefinite period of time.

The major consumer interest in the damageability characteristics of an automobile is associated with the probable cost of vehicle ownership. For the majority of consumers contemplating the purchase of a new car, the most meaningful index of damageability is one that advises him that a specified reduction in insurance premiums can or cannot be obtained by choosing a particular model. From this information he can infer parallel savings on repairs he may have to pay for himself.

In dealing with insurance premiums, however, the bill requires only that:

The Secretary shall—make such information available to insurance companies and business organizations engaged in the business of selling or underwriting vehicle insurance in interstate commerce \* \* \*

and

\* \* \* report to the President and the Congress on February 1, 1973, on the extent to which the motor vehicle insurance industry is utilizing such information in the determination of insurance rates.

No further action is required of the Secretary or the insurance industry. In fact, the Secretary is not even required, in establishing tests, to determine that insurance premiums will be adjusted to reflect differences in damageability.

The insurance industry uses a variety of rating criteria in establishing premiums for an individual policyholder. The great majority are related to the age, sex, traffic record, and driving characteristics of the person to be insured. While the rating of the policyholder has reached a high level of refinement, little effort has been made to rate the safety or damageability characteristics of the vehicle.

It is to be noted that in the 5 years since the passage of the National Traffic and Motor Vehicle Safety Act of 1966, no adjustments in insurance rates have been made to recognize the effect of the many compulsory standards that have been promulgated to improve the safety characteristics of recent model American cars. Ford believes that the absence of such ratings results from the fact that any premium reductions justified by differences in the car to be insured would be dwarfed in their impact on the policyholder by ratings related to the characteristics of the person to be insured.

Only one major automobile insurance company in the United States has stated that it would reduce premiums on cars equipped with a design feature as substantial as 5-mile-per-hour bumpers front and rear. The reduction that has been offered would be limited to collision coverage. It would produce savings of less than \$15 per year for the average American policyholder and less than \$25 per year in a high insurance cost area like Washington, D.C. It should be noted that the effect of rating characteristics as subtle as whether or not an 18-year-old male driver in the family was a good student, or whether or not the insured drives more than 19 miles to work, would have an impact on premiums five to six times the size of the reduction offered for 5-mile-per-hour bumpers.

If I may interrupt for just a moment and explain the table in my testimony: In Washington, D.C., (the basic insurance premium

for \$100 deductible is \$122 for a 1971 Ford Galaxie. The premium would drop to \$92 in the second and third years and \$79 in the fourth and fifth years. Assuming a 20-percent reduction in collision premiums only, the policyholder would save \$24 in the first year in a high-cost area like Washington, D.C., something like \$18 in the second or third year, and something closer to \$16 in the fourth and fifth years.

You will note from the table that the reduction offered if an 18-year-old qualifies for a good student rating or if the driver drives more than 10 miles to work, the reduction and the increases are in excess of \$100.

Returning to my testimony, Ford believes that the imposition of vast new testing requirements on the automobile industry, at a time when the industry is faced with the extraordinary testing demands of higher priority air pollution and safety standards, is unnecessary. Ford recommends that no new testing requirements be imposed on the automobile industry until the Secretary of Transportation has developed a method of comparison that the insurance industry is prepared to accept and until the legislation provides assurance that meaningful reductions in insurance premiums will result from the data gathered in these comparisons.

At the point in time at which these criteria are met, Ford would have no objection to the publication of data advising the consumer that he could obtain specific reductions in his insurance cost by purchasing a specified make or model.

We believe, however, that the requirement that production versions of each make and model be tested at various different speeds is unnecessary. We suggest that the industry be permitted to use the same reporting procedures, with respect to damageability, that it is now permitted to use in reporting the safety characteristics of the car.

Personal injury risk comparisons: Proposed section 125(d) would require the Secretary to—

Undertake a study of the feasibility of developing tests and testing procedures designed to allow a determination and comparison of the risk of personal injury or death to occupants of passenger motor vehicles from traffic accidents which reasonably may be anticipated to occur at normal speeds and under normal operating conditions.

The proposal requires the Secretary to report his findings and recommendations to the President and the Congress by July 1, 1972, but if he finds such tests are feasible, he is required to prescribe a system of tests and test procedures without further scrutiny by the President or the Congress.

Ford would fully support a study designed to improve the information available to consumers. We believe also that information gained from such a study might assist the Department of Transportation in establishing needed priorities to guide the Department in promulgating future standards affecting the safety characteristics of automobiles.

We think it is important to note that in the 5 years since passage of the 1966 act, it has not been possible to develop tests that would permit comparisons of the relative risk to occupants of cars built before and after the effective dates of many of the compulsory safety standards that have been promulgated. We doubt, therefore, that the re-

quirement that the proposed new study be completed by July 1, 1972, is reasonable. Ford suggests that the reporting date be extended.

We believe, however, that the Secretary should not be authorized to take further action on the basis of this study alone. Because inaccurate comparisons could mislead consumers and do serious harm to manufacturers, we think the President and the Congress should be provided the opportunity to review and act on the results of the study before the Secretary is authorized to proceed further.

**Property loss reduction standards:** Proposed section 125(b) requires the Secretary to—

As soon as possible, after July 1, 1972, promulgate property loss reduction standards which will minimize the economic losses associated with motor vehicle accidents.

Proposed section 125(c) requires the Secretary to—

Promulgate a property loss reduction standard which requires that all motor vehicles manufactured after January 1, 1975, and offered for sale in the United States, are so designed and constructed with energy-absorbing bumpers capable of withstanding impacts, front and rear, of 5 miles per hour into a solid fixed barrier.

Ford does not believe that the establishment of compulsory standards governing the damageability of automobiles is desirable. If the issue is solely damageability, we believe that Government efforts should be directed at providing the consumer with the information on comparative insurance costs that could be made available if the damage susceptibility testing provisions of S. 976 were modified as previously suggested.

The establishment of compulsory standards would restrict the consumer's choice by requiring him to accept an advantage in damageability at the price of compromises in other elements of the purchase that may be of greater importance to him.

If an automobile buyer elects to accept a damageability risk in exchange for an appearance gain or some other benefit that is of importance to him, that would seem to us to be his decision to make and not a matter of public policy.

If I may, Mr. Chairman, interrupt the prepared statement, I described a possible \$24 reduction on a Galaxie in the first year in Washington, D.C., in that table.

If you move to Cedar Rapids, Iowa, which is a far lower cost insurance area and you assume that the insured has purchased a Pinto instead of a Galaxie, the collision premiums on a Pinto are \$48 in the first year and they drop to \$36 in the second and third year.

That means the consumers' savings, if all insurance companies gave the 20-percent reduction that a single insurance company has offered, would be about \$10 in the first year on a Pinto, about \$7 in the second or third year, and all of \$6 or \$5 in the fourth, fifth and sixth years.

This matter of consumer choice is one that we think is important. We think it is very possible that a buyer of a car like the Galaxie in a high insurance cost area like Washington, D.C. would want to purchase a high-impact bumper. We think it is far less probable that a buyer of a far less expensive car in a much lower insurance cost area would want to have exactly the same requirement imposed on him.

SENATOR PASTORE. Is there a relationship between this damage and the question of personal injury? We seem to be overlooking that.

For instance, if a car can be damaged, it means that the susceptibility of injury to the individual is the greater, isn't it? You keep talking about premium cost. How about the human element here?

Mr. NEVIN. Senator, when the Department of Transportation recently promulgated I believe a 5-mile-an-hour front bumper standard and 4-mile-an-hour rear bumper standard, the basis of that promulgation was the possible damage to safety-related components.

I think that the Department made no suggestions, sir, that there was any impact on passenger injury. As a matter of fact, one of the technical problems that the industry is faced with in dealing with this problem of damageability is to find designs in bumpers that will absorb energy and not require that the passenger or the occupant absorb it.

The problem, sir, is technically the reverse. To the extent that that sheet metal is crumbling in the automobile, it is absorbing energy. As it absorbs energy, that is energy that the occupants are not going to absorb as they crash into instrument panels or something else.

Senator PASTORE. Do I understand you correctly? You are telling me that if you have a bumper that can be easily damaged or more easily damaged, the susceptibility to personal injury becomes less, is that what you are saying now?

Mr. NEVIN. No, I did not mean to say that.

Senator PASTORE. That is the way I understood you.

Mr. NEVIN. What I said—

Senator PASTORE. You are talking about absorption of energy. Who is to absorb it, the bumper or the individual?

Mr. NEVIN. Let me see if I can restate it, because I apparently was not clear.

First, in answer to your question is passenger injury wrapped up in a bumper standard. I would answer your question negatively, sir. The Department of Transportation in promulgating the standard made no representation whatsoever that passenger injury was involved. The basis for the standard related to the Safety Act was that safety-related components might be damaged in the collision.

S. 976 provides for inspection of cars after an accident which would accomplish the same objective. But there was no representation by the Department—

Senator PASTORE. Let's forget the Department's representation. You are representing the Ford Co., you are speaking here as an individual. Let me ask you: Is all this related in any way to the personal injury of the individual driving that automobile, regardless of what it means on premium rates?

Mr. NEVIN. No, sir. Ford has no information to suggest that the damageability characteristics of an automobile relate to passenger injury, and we know of no evidence that has been presented by the Department of Transportation or anybody else to suggest there is any such relationship.

Senator PASTORE. Have you made any studies along this line?

Mr. NEVIN. Yes, sir, I started to describe those studies.

The studies we have made indicate that one of the technical problems, not a problem that I am going to represent to you is nonresolvable, but one of the technical problems we will have as we try to improve the damageability characteristics of automobiles is to accom-

plish designs that permit that improvement without reducing their passenger injury characteristics.

But the two objectives are contra one another in terms of design and those problems must be resolved, sir.

Senator HARR. On that point, I am grateful the Senator from Rhode Island raised it. On Friday last there was testimony from the Cornell Aeronautical Lab far too technical for me to inhale on Friday afternoon, but hopefully all of us can better understand it as we read the record, that suggested that there was a compatibility between the safety to occupant and the damage avoidance design and construction of the vehicle.

The one thing that he emphasized that I do recall was, we must seek to avoid a bounce-back effect involving the occupant.

Mr. NEVIN. I do not think it is appropriate for me to comment further. As you know, I am not an engineer, and I probably should avoid trying to take a technical position here. I am sure it varies depending on what speed you are talking about and how much damage you are trying to prevent at what speeds.

If an automobile buyer elects to accept a damageability risk in exchange for an appearance gain or some other benefit that is of importance to him, that would seem to us to be his decision to make and not a matter of public policy.

Ford doubts that the requirement that vehicles be equipped with 5-mile-per-hour bumpers will result in commensurate savings to the consumer. The single automobile insurance company that has committed to a reduction in premiums for cars equipped with these bumpers has stated that that reduction will be limited to 20 percent of collision premiums.

In 1969, collision premiums collected by the companies included in Best's Aggregates & Averages totaled \$2.7 billion. In 7 or 8 years, when almost all insured vehicles are equipped with such bumpers and if all insurance companies provide the 20-percent reduction on collision premiums, consumers might save \$540 million annually.

During the next several years, when only recent models will be equipped with such bumpers, insurance savings will be far lower. If Ford's belief that a price increase of about \$100 per car to provide 5-mile-per-hour bumpers is accurate, the consumer is unlikely to recover, through insurance savings, the added costs he incurs at the time of purchasing a new car.

A 20-percent reduction in all collision premiums would have the effect of ultimately, when all cars have the new bumpers, reducing total automobile insurance premiums by only 4.7 percent. In recent years, automobile insurance premium costs have risen by close to twice that amount each year. If the consumer is to benefit from the new bumpers, very major gains would have to accrue to uninsured motorists or to persons incurring costs as a result of collision coverage deductibles.

The data published in Best's Aggregates & Averages suggest that if the objective of the bill is to accomplish a reduction in insurance costs and, thus, in the costs of automobile ownership, the establishment of damageability standards for new cars should not constitute the initial course of congressional action.

The insurance companies whose results are reported by Best spent some \$12.3 billion in 1969. Of that total, \$4.5 billion was spent in ma-

terial damage payments to policyholders; \$3.3 billion was spent in bodily injury payments to policyholders and \$4.5 billion was spent to cover the administrative and selling costs incurred by the insurance companies themselves.

The data included in Best's *Aggregates & Averages* indicate that 36 cents of every insurance expenditure dollar was used to cover overhead costs and not to reimburse the policyholder. Even that estimate of the cost of delivering benefits may be understated. An extensive and detailed Department of Transportation study indicates that, of the \$3.3 billion paid out in bodily injury claims to policyholders, close to \$1 billion was used to cover legal expenses.

The costs incurred to deliver benefits to an automobile insurance claimant are considerable. If the calculation of benefits paid considers legal costs to be a benefit rather than an expense, the automobile insurance industry incurred a cost of \$4.5 billion in 1969 to deliver \$7.8 billions in benefits. Expressed differently, the insurance industry incurred a cost of \$58 for each \$100 of benefits it delivered to policyholders.

If the almost \$1 billion in legal fees are considered to be an expense of the system rather than a benefit, the industry required \$5.5 billion of expense in 1969 to deliver \$6.8 billion in benefits. On this basis, \$81 of overhead cost was required to deliver each \$100 of benefits to policyholders.

Ford understands that it costs about \$20 to deliver \$100 of benefits under private health and accident plans, about \$8 to deliver \$100 of benefits under Blue Cross plans, and about \$3 to deliver \$100 of benefits in the social security system.

Moving now to standards to facilitate inspection and repair. Section 128 of S. 976 requires the Secretary to "as soon as practicable, promulgate Federal motor vehicle safety and property loss reduction standards which require that all motor vehicles manufactured after Jan. 1, 1975, and offered for sale in the United States, are so designed and constructed as to facilitate motor vehicle inspection and to facilitate the repairs necessary to meet the requirements of such inspection."

When the 1966 act was passed, Congress determined that vehicle safety standards should be performance standards and that the Government should not become involved in determining how cars are designed and constructed. Proposed section 128 of this bill appears to contradict that determination with respect to the repairability and inspection characteristics of an automobile.

Differences in the time required to inspect or repair vehicles are very frequently directly related to differences in vehicle features and equipment. A Mark III is substantially more complex than other vehicles offered for sale by Ford and often more difficult to diagnose and repair. We believe that the buyer of a Mark III understands that he has accepted those compromises and believes those compromises to be reasonable relative to other advantages he finds in the vehicle.

We don't believe that the public interest would be served by either directly involving Government in the design and construction of vehicles or by limiting the consumer's right to make choices in these areas. We are, in fact, aware of no special difficulties in inspecting motor vehicles for safety performance that would be eased through economically justified changes in car design. Ford does not, therefore, support this portion of S. 976.

## VEHICLE SAFETY INSPECTION AND UNIFORM CERTIFICATES OF TITLE

Section 501(a)(1) of S. 976 requires the Secretary of Transportation to "not later than January 1, 1973, amend Highway Safety Program Standard No. 1, relating to periodic motor vehicle inspection" \* \* \* to \* \* \* "require inspection of a motor vehicle whenever the title to the motor vehicle is transferred for purposes other than resale and whenever the motor vehicle sustains damage if any safety related mechanism, subsystem or functional nonoperational part as defined by the Secretary is damaged."

Section 501(a)(3)(b) requires the Secretary to "not later than January 1, 1973, amend Highway Safety Program Standard No. 2 \* \* \* to include requirements for a State motor vehicle registration and uniform certificate of title program \* \* \*."

Ford has actively supported mandatory vehicle safety inspection and uniform certificates of title for many years. We support these provisions of S. 976. We believe, however, that there is merit in requiring periodic inspection, rather than requiring inspection only before resale and after an accident.

As a matter of fact, if we were to make a recommendation to you it would be both periodic inspection and inspection after the accident and eliminate the requirement at the time of resale, so that the car that stayed with one owner for 6 or 8 years would be subject to inspection.

We do not believe that the requirement that garages, service stations and dealerships be precluded from serving as inspection stations is in the public interest. The diagnostic equipment and the manpower skills required to provide effective inspection and repair of motor vehicles are interchangeable, expensive, and, in many parts of the country, in short supply. Business outlets repairing automobiles will require the same equipment that is used to inspect vehicles in order to make certain that repairs have been accomplished in a manner that will meet inspection demands.

The requirement that inspection stations be businesses not engaged in vehicle repair would add consequentially to the costs of the inspection program and probably add significantly to the inconvenience a consumer must accept in order to meet inspection requirements.

Again if I may interrupt and depart from the testimony, I understand that the committee is considering an amendment to this inspection requirement that would incorporate a requirement to inspect vehicles to determine their air pollution characteristics, to determine that air pollution standards were being met.

The Environmental Protection Agency I believe is now deeply involved in a study to develop the kind of equipment and diagnostic techniques that might accomplish that objective in the field. I suspect that that will be a difficult technical job. I suspect it will require very skilled people; I suspect that it will require some rather sophisticated equipment.

Under these circumstances, we think, Ford believes that it would be unfortunate to say that those people must be employed separately in diagnostic stations and in places that do not do repair work. The same technology, the same personnel skills, the same equipment is certainly going to be needed in the places of business that attempt to

accomplish whatever repairs are needed to bring the car up to the standard.

We assume that the requirement that inspection stations be separated from garages is designed to prevent frauds associated with inspection reports that require the consumer to pay for unnecessary repairs. We believe that the objective of avoiding such frauds could be more economically attained through programs designed to monitor the performance of the outlets licensed to perform inspection services.

Much of our concern with the provisions of S. 976 results from conclusions we have reached with respect to the probable cumulative impact on new car prices of actions that would be required or authorized by S. 976 and actions that are now required to achieve air pollution control and safety objectives.

It can be demonstrated that changes in the design of automobiles have produced considerable improvements in their average emission characteristics. Carbon monoxide and hydrocarbons were the first automotive pollutants to be identified and controlled. Vehicles produced prior to controls emitted about 77 grams of carbon monoxide per mile; today's vehicles emit less than 25 grams per mile, a reduction of 70 percent. Cars produced prior to controls emitted about 16 grams of hydrocarbons per mile; today's vehicles emit less than 3 grams, a reduction of 83 percent. Cars produced beginning in 1973 will emit oxides of nitrogen at rates about 44 percent below those of cars produced prior to controls.

There is less compelling, but very encouraging, evidence to suggest that gains are also being accomplished in reducing traffic fatalities. In 1970 the absolute number of traffic fatalities in America declined despite an increase in automobile usage.

While significant gains have been made to date in controlling automotive pollutants and in reducing highway fatalities, the industry is now involved in efforts to meet even more stringent Federal standards that will be effective in 1973, 1974, and 1975.

The 1970 amendments to the Clean Air Act require that automotive pollutants be reduced to levels about 95 percent below the levels that existed prior to controls.

In addition to other safety-related actions, we are attempting to improve occupant protection features of our products to accommodate, as fully as possible, the objectives of a new standard that requires fully passive protection of unbelted occupants in crashes at speeds up to 30 miles per hour.

Needless to say these are substantial technical tasks.

S. 976 would establish a third set of goals. It should, in our opinion, be evaluated in terms of its possible cumulative effect on car prices during a period in which the consumer will be confronted with substantial price increases as a result of higher priority air pollution control and safety-related actions.

During the 1966-67 period, the prices of new cars were increased as a result of requirements that windshield washers, backup lights, outside rear view mirrors and other equipment, that had previously been optional, be installed on every car in America. The actions that have been taken in more recent years to improve automobile safety and reduce automobile pollution have also had an impact on car prices.

In 1968 the Bureau of Labor Statistics recognized a \$70 increase in the retail price of the average American car as being the result of added safety and emission control devices. The cumulative impact of safety and emission-related retail price increases, recognized by the Bureau of Labor Statistics, totals \$162 for the 1968-71 period.

The Environmental Protection Agency estimated, in a recent report to the Congress, that emission control devices to be added between 1972 and 1975 will add about \$223 more to the price of American cars. The estimate is probably too low, but it is adequate for the purposes of this testimony. Ford estimates that the addition of passive restraint systems and other safety devices, exclusive of high impact bumpers in the 1972-75 period, will add an additional \$100 to \$250 to the price of the average car sold in the United States.

By 1975 Ford would estimate that the price of the average American car will have been increased by from \$450 to \$600 to accomplish national air pollution control and safety objectives. That increase is in current dollars; it does not provide for the effects of inflation. If it is assumed that new car sales volumes will average 10 million units per year during the next decade, the American public will pay from \$4.5 to \$6 billion annually to finance these programs. All but approximately \$1.5 billion of that annual expenditure will be added during the next 3 years.

To summarize Ford's views:

Ford's inability to support many of the provisions of S. 976 results from a desire to protect the consumer's right of choice, and a desire to avoid the risk of unnecessary further increase in the prices of new cars. It would seem appropriate to summarize our views with respect to these two issues.

Ford is aware of the fact that large numbers of American consumers place a very high priority on repairability and damageability in evaluating the relative merits of the automobile offerings that compete for their attention.

We have placed considerable emphasis on repairability in the design of the Maverick, Pinto, Comet, and Capri car lines that we have recently introduced in the United States. That emphasis has been directly rewarded through increased sales and profits. We do not believe that compulsory repair standards are necessary to assure the consumer of the opportunity to choose a new car that offers advantages in this area. We are concerned that such standards would prevent the consumer who places higher priority on other vehicle attributes from exercising his choice in the market.

We are also aware that very large numbers of American consumers will place great emphasis on damageability characteristics when they purchase a new car. We doubt that any seller of automobiles in the United States could hope to compete successfully in future car markets unless a significant portion of his product line offered advantages in the damageability area. We do not believe that compulsory standards are necessary to provide the consumer, who seeks these attributes, with the opportunity to find a suitable product when he enters the market. We fear that the effect of compulsory standards will be to unnecessarily restrict the choice available to consumers with other interests.

We have noted that we see no reason why the buyer of an American made car should not be permitted to accept a compromise in damageability in exchange for vehicle features that are more important to him. Similarly, we see no reason why an American consumer should be unable to purchase a Jaguar or a Mercedes if low volume overseas producers found it uneconomic to meet American damageability standards but offered offsetting values to attract the American consumer.

If, in the future, a car manufacturer decided there was a market for a car that was significantly less damage resistant than competitive models, but offered other appeals, we assume that the insurance industry could impose a surcharge when establishing premiums for that car in much the way it now imposes a surcharge for cars equipped with high performance engines. If the consumer found the other appeals of the new model overriding and accepted the surcharge, we see no reason for legislation that would prevent the exercise of that choice.

Again if I may depart from the testimony Senator I think that there is a parallel to the approach that Ford suggests in fire insurance coverage for a home and in such things as a homeowner's policy.

I am going to use cities that may not be familiar to anyone except Senator Hart, but in the Detroit area if a man buys fire insurance on a \$15,000 home for 1 year in Detroit he pays about \$29.60 per year. If he moves out to Hazel Park or to one of those suburbs, he goes up to about \$31. In Southfield and Bloomfield, he goes up to about \$37. If he moves out to Franklin Village he is at \$48. So, he is now paying a premium of \$48 where he could pay \$30 in Detroit. If he moves to a completely rural area, he pays \$57 for the same coverage.

In a homeowner's policy, if a man buys an all masonry home and insures it for \$15,000 in Detroit, he pays \$45. If he insures a frame home in a rural area, he will pay \$68 for the same coverage. What we are really urging is that the effort of the Congress to make sure that the consumer has information with respect to the insurance premiums he has to pay and with respect to the costs he is incurring to exercise any other option at the time of car purchase rather than establishing a standard that would make cars identical.

With respect to price increases, Ford believes that actions taken to accomplish national objectives in the safety and air pollution areas will have an impact that is so sizable as to require that every effort be made to avoid additional actions that might lead to further increases. Even though it can be assumed that there is wide public support for the safety and air pollution control programs that will lead to these increases, there is a point at which the consumer's ability to pay becomes a critical consideration.

In our opinion, there is a considerable risk that the price increases required to meet safety and pollution objectives and those that will be required to offset the effects of continuing inflation during the next several years may be so sizable as to exceed the ability of many consumers to pay. If that were to happen and the effect were to be a decline in new car sales volumes, our country would suffer in several ways: First, the achievement of national objectives in the air pollution control and safety areas would be seriously delayed. The cars being produced by the industry today are both safer and more pollutant-free

than the older cars that they will replace on the American highway. A decline in new car sales volumes would have the effect of deferring the replacement of the older vehicles that are the most serious contributors to safety and pollution problems.

And, second, a serious decline in new car sales would also have adverse economic effects that would extend well beyond the automobile industry. An automobile slowdown would affect thousands of supplier plants in dozens of supplier industries throughout the country.

Such an economic reversal would produce unnecessary income losses for the employees affected and result in reduced tax revenues at the municipal, State, and Federal levels of Government with attendant adverse effects on the ability of the governments to fund a wide variety of needed programs.

That concludes our testimony. We are grateful for the opportunity to appear today.

Senator HART. Mr. Nevin, thank you.

Most of all thank you for being explicit in the position that Ford takes on the several proposals and legislative enactments. As I get it, the thrust of your opposition with respect to the authority vested in the Department of Transportation to set safety property loss standards hinges on the fact that the engineering resources available that could be put to the job of property loss reduction are tied up in attempts to meet the safety and air pollution standards, that there is a limit to the resources; and, second, that you anticipate that the cumulative price impact of safety requirements, emission requirements, and property loss reduction and vehicle inspection requirements would be a disservice to the consumer or put it another way it would dampen car sales; and, third,—well, you question the desirability of requiring everybody to buy cars with minimum property loss reduction standards that are federally required, suggested that those requirements restrict really consumer choices; and, finally, that the proposed bill S. 976 really offers no substantial promise of offsetting reductions in insurance and repair costs.

Have I fairly summarized your statement?

Mr. NEVIN. That is a very fair summary of the points I have attempted to make, sir.

Senator HART. So we can evaluate it—and I wouldn't anticipate that you can give me the answer to the question that I am going to ask you, but we would ask you to provide it for the record—would you tell us how many engineers Ford Motor Co. now employs, and of the total how many are working on safety programs, emission control, and design features, the three categories?

Mr. NEVIN. Yes, sir. I will attempt to get you a specific answer. I think I can give you a general answer. The air pollution standards the Congress has set for the 1975 period, of course, involve the carburetion system of the automobiles, all the engine systems; the great bulk of the power and exhaust systems are wrapped up in that.

Regardless of what work an engineer is doing on a car that is going to be produced in that period, he must be concerned with the impact of that work on our ability to meet that standard. So, in terms of the power train components I think the statement could be made—and I wouldn't want to literally prove it—that there is no engineer concerned with carburetion or the power kind of components of the car who

doesn't have to be concerned with the air pollution objective, because that's where the problem is—in exhausts.

When you get to the safety standards that have been promulgated, when you talk about passive restraint systems, and you understand what I am talking about here, a system that will protect the occupant without belts, you must consider major redesigns of the instrument panel of the car and the interior of the automobile, and by the time you move from there to the bumper regulation that has already been imposed, you have begun to define design parameters of the front-end sheet metal.

I am not trying to give you an offhand answer and I will try to answer it for the record, but I am only trying to describe for you, by the time you take these two major Federal objectives, safety and air pollution, I think the representation we have made that meeting Government standards in these areas will require a completely, virtually complete, redesign of automobiles, is a fair representation for the committee's consideration.

I will do what I can to get you a more specific answer, sir.<sup>1</sup>

Senator HART. I am impressed and am reminded by your testimony of the intensity of the manufacturer's efforts to design a vehicle that does enhance the safety of the occupant and in more recent days your concern about design for repairability.

Where I disagree with Detroit is that this concentration of effort is principally the result of what Detroit thinks is an unfair intrusion by the Congress in its business. I salute and I anticipate the kind of figures we will get on those engineers, but certainly in the period of time I have been here, until we really looked serious about doing what so many in Detroit felt was outrageous, there wasn't this kind of concentrated drive.

Are you game to react to that?

Mr. NEVIN. Yes; but carefully. Let me avoid your direct question, Senator Hart, as to whether Detroit in previous testimony responded in the way it might wish it today had to these public objectives.

Whatever answer I gave to that question, I think you and the other members of this committee would agree that you have now taken sufficient action to get our attention. I think there is no question but that the standards that have been established for the middle seventies in air pollution and in occupant safety are not subject to quarrel between us and the Department of Transportation or the EPA in terms of whether they are terribly demanding standards.

There may be some fringe quarrels as to whether this can be done or whether that can be done or what the number would be, but I think there would be no responsible administrator in either of these programs who would come to this Congress and say anything other than that these are terribly demanding standards that do encompass substantial reengineering of major vehicle systems and in some cases virtually complete reengineering of cars.

I have to agree, I ducked your basic question and tried to answer one close to it.

Senator HART. Thank you for that.

Back to the subject matter more directly here, you indicated that the total cost to the consumer of these several standards that we are

<sup>1</sup> See p. 1391.

talking about would be that the cost benefit wouldn't be there. If the Federal Government required every car to have bumpers able to take a 5-mile-an-hour barrier crash without damage, what price at retail would that bumper protection carry?

How would you price it?

Mr. NEVIN. Ford's estimate at this point in time, Senator, for 5-mile-an-hour front and rear, our estimate is that will have an impact on car prices of approximately \$100 at retail.

That is an estimate. I think it is the most accurate answer I could give you to your question, and it is that kind of an estimate with respect to cost that, particularly in the case of a car like a Pinto, leads us to believe that if the policyholder is going to get a \$10 insurance premium reduction the first year, \$8 the second and third year, and \$6 in the fourth and fifth, that there is merit in the Congress pursuing the proposal of this legislation which is to ask the Secretary to study damageability characteristics.

I must be candid with you, I don't hold out much hope for that study, sir. I think when property insurance companies have been rating the fire risk in houses depending on whether it is brick or frame and depending whether it was close to water or not and what kind of fire department it has had for years, when the insurance industry has had a chance to rate the safety characteristics of the car through 5 years of very intensive Government action to improve the safety characteristics of the car and has found no reason to reduce premiums, I must say I think when they get done with the study those rating characteristics that they assign to the characteristic of the driver, whether he has got a bad accident record, his sex, his age, the kinds of things they now use, will remain so dominant—and I hope you understand I am not trying to be critical of the industry, I honestly don't believe they will find from one car to another differences that are so substantial as to base ratings, to use them, and I guess the one piece of evidence I would bring to your attention besides their past performance is even where they have brought to the Congress data as to what it costs to repair Ford, Chevrolets, Plymouths in 5-mile-an-hour accidents, 10-mile-an-hour accidents and 15-mile-an-hour accidents, I think you would agree, sir, there is a remarkable similarity in the cost which suggests that this is what at the current level of design it takes to correct that kind of damage and there is no evidence to my knowledge of dramatic differences of one car to the other.

Senator HART. They are all too high is the reaction of the audience. Not to hold you to any more precise figure than about \$100 retail, what would that 5-mile-an-hour bumper add to the price at wholesale?

Mr. NEVIN. I would judge that if the \$100 number is at retail, the wholesale number would be in the order of magnitude of \$80. Some of our cars have a 25 percent discount; some of them have a 17 percent discount. Depending on the car line, \$100 at retail would perhaps range from \$75 to \$83 at wholesale.

I may be getting more accurate than I should be.

Senator HART. The record may be corrected.

Mr. NEVIN. So long as you accept it as a ballpark kind of answer, I am happy to give it to you.

Senator HART. I will ask a ballpark question. The Bureau of Labor Statistics would indicate that the wholesale price on at least safety

related changes has been double; that is, if it was \$100 at retail for that bumper it would run about \$50 at wholesale.

That is not your impression?

Mr. NEVIN. That is not my impression, sir. I would be happy to correct that for the record.

As a matter of fact, I believe that the basis on which the Bureau of Labor Statistics makes this judgment is to evaluate the retail increase first and then fall out the wholesale impact on the basis of the relationship between our selling prices to dealers and the suggested retail prices.

But I will be happy to give you a more definitive answer.

(The following information was subsequently received for the record:)

The estimated wholesale and retail price relationships for the five-mile-per-hour bumper are consistent with the wholesale and retail prices for safety items submitted to the Bureau of Labor Statistics and on which ultimately retail price announcements were made by the Bureau of Labor Statistics.

Ford Motor Company's wholesale prices range from 70% to 78% of suggested retail prices, depending on the car line. The difference between the price levels represents dealer margin and excise taxes only. Ford's communication to the Bureau of Labor Statistics, including safety and emission items, is on both a wholesale and retail price basis.

Senator HART. The Senator from Rhode Island.

Senator PASTORE. In your statement, you say "By 1975 Ford would estimate that the price of the average American car will have been increased by from \$450 to \$600 to accomplish national air pollution control and safety objectives."

Have you any figures that would indicate by 1975 what the cost would be to the consumer because of styling?

Mr. NEVIN. Yes, sir. I believe that the amortization and special tools—now, I am going to use special tool amortization, Senator, because that is the best measure I can give of what it costs to style a car—the amortization of special tools in our 1970 financial statement totalled \$400 million and that is against \$14,900,000 of sales. So tool amortization the writing off of tools that have been disposed of because of styling changes, amounts to about 3 percent of total Ford Motor Co. sales.

We have announced publicly, sir, that we will reduce the rate of styling change in the future both to conserve engineering resources and to minimize the kinds of costs that we have to pass on to the public. The opportunity for reduction here in my judgment has been overstated. First, it is only 3 percent of sales and, second, there are very major tooling expenditures in the automobile industry associated with the accomplishment of these standards.

The accomplishment of the standards is not limited to a variable cost penalty, something you buy from another manufacturer and simply hang on to the car. When you put a 5-mile-an-hour bumper on the car, it is frequently necessary to restyle the front end of the car so that the fenders are protected by the bumper.

I am not exaggerating when I tell you, sir, that there are now in our styling studios cars with appearance changes that we had not planned. We had not planned to change the appearance of the car, but, because of the requirement that we have a 5-mile-per-hour bumper on the car, we either got, without wanting it, a changed appearance in the re-

design required to accommodate that bumper or we were able to get an appearance change at no additional cost because every piece of metal had to be changed anyhow.

I think the best direct answer I can give you is every effort is being made to save here in terms of styling for styling sake, that it is only 3 percent of sales to start with, so it cannot have an enormous impact and some of the effort to save will not show up in terms of cost saving because the tooling expenditure must be made for another purpose, the far more legitimate purpose of meeting a public objective.

Senator PASTORE. I would like to have an answer that is related to the cost, if you can. If you cannot do it, that is another thing, too. You are very explicit here in giving the layman the idea of what these national air pollution and safety objectives will cost the consumer by the year 1975 and you relate that to an individual car, and you stated it is between \$450 and \$600. Now, this dissertation that you just gave me, could you reduce that in terms of what it would cost for the individual car by 1975 so that the man who buys a car can understand that?

Mr. NEVIN. I will attempt to do that.

Senator PASTORE. If you cannot do it now, would you put it in the record for us?

Mr. NEVIN. I think I can attempt to do it now. I start from the 1970 number of \$400 million of tool amortization against \$15 billion of sales. Approximately 3 percent of our cost is in tool amortization. If you assumed we had no tools, which of course would not be true, we would still have to stamp out the car, but just assume none, we could have reduced car prices by 3 percent, \$90 on a \$3,000 car.

Now, I think the answer to the question, the answer I was trying to give you was that we hold little hope that there will be consequential offsets in tooling costs by the middle 1970's that could be passed on to the consumer, and the reason is not that we continue to restyle the car but, rather, that the tools are being bought except the purpose of purchasing those tools differs now. Instead, to have the front end round instead of square or something like that, the tools are being bought to redesign the car to achieve some structural objective related to damageability.

Senator PASTORE. Why is the styling changed so often? Is it to meet competition, is it to create jobs, or what is the reason for it?

Mr. NEVIN. I think that the automobile industry has thought—and I am using the past tense here—has thought that it was dominantly a style industry through many years. I think there is—I won't say think—I am certain there is enormous evidence to suggest today that there are large numbers of American consumers who no longer regard their automobile as a style item, who seek pure function. As we design cars like the Maverick and the Pinto, for example, we simply made the statement that the rate of styling change is going to be far less than it was in the past. You have probably noted, and if you have not yet you will in the future, but even the rate of styling change on the higher-priced American cars has been reduced. I think the reason for that change in approach in the market derives from several factors. First, large bodies, of consumers are simply not interested in. I guess it was in 1955 that you could say that the American public paid close to \$20 million to get wraparound windshields. I don't think that

would happen today. I do not think there is a styling feature you could put on a car that would cause consequential numbers of Americans to say I have to have that. The emphasis is far more on the cost of ownership and on reliability.

The attempt to conserve engineering resources to avoid cost in a time when we are critically concerned with costs contribute further. I hope you don't misunderstand the dollar data on price increase I presented to you, Senator.

Senator PASTORE. I don't think I did. You said it cost about \$90. You multiply that by four or five to get a total figure in 1975?

Mr. NEVIN. It is about \$90 per year.

Senator PASTORE. And if you multiply it by four, it comes out about the same, doesn't it?

Mr. NEVIN. No, sir. It is \$90—the \$400 million is a single year.

Senator PASTORE. That is what I am talking about. So to get 1975, you multiply that single year by four?

Mr. NEVIN. No, sir. It's not cumulative.

Senator PASTORE. You mean to tell me that the styling will cost the consumer only \$90 by year 1975, the change in styling?

Mr. NEVIN. To be more exact, sir, the translation to a \$3,000 car may be modestly inaccurate, but to be more exact the cost of special tooling to the Ford Motor Co. in 1970 represented about 3 percent of sales; and I would say that special tooling on a \$2,000 car accounted for \$60 of its cost; on a \$3,000 car, \$90 of its cost; on a \$5,000 car, \$150 of its cost.

I was trying to use that number, because that is where we are today.

Senator PASTORE. I know it, but that is 1970.

Now, how about 1971? How about 1972, how about 1973?

Mr. NEVIN. I can honestly hold out to you no hope for any consequential reduction, because I think the level of tooling we are going to have to amortize each year will at least stay constant except the reason for the amortization will not be that we decided we wanted a different shape fender but rather that we were meeting some new standard for the next year which required that the car be retooled in order to accomplish the objectives of that standard.

Senator PASTORE. Are you saying to me that while it will cost between \$450 to \$600 to accomplish the goals that have been set for aid pollution and safety, insofar as styling is concerned, there will be no additional cost?

Mr. NEVIN. Yes, sir. I think I have to agree with that, there will be no offset as a result of reduced tool expenditures even though the rate of styling change will be dramatically reduced.

Senator PASTORE. I will be here in 1975 with the grace of God and I will ask you the question again.

Mr. NEVIN. Yes, sir.

Senator PASTORE. And I don't mean any impertinence by that, but it is hard for me to digest that statement, that insofar as styling is concerned, by year 1975 the consumer will not pay a nickel more than if you had remained the same. I just cannot digest that statement.

Now, I come back to the same question again. Why is the styling change at all? Is it because it is better to create jobs and keep more people working, because it improves the esthetics of the industry, or is it done to meet competition, both domestic and foreign?

Mr. NEVIN. I think that the basic——

Senator PASTORE. You see there are some people who feel we change our styles too often and this is carried on the back of the consumer. Then there are other people who say if you don't change the style, it means you don't have to manufacture more tools, and a lot of tool industries will be hurt.

I was wondering whether a study had been made of this to bring it in more or less proper perspective?

Mr. NEVIN. I think there are two results of a styling change. First, let me answer your question, I would have to say that the major reason for styling change in the past has been the belief that a fresh, new look would attract the consumer.

That has been the overwhelming reason.

Senator PASTORE. Yes, sir. There has been both an adverse and what I would hold out to you a beneficial effect of that on the American consumer, on the consumer, not on the automobile companies. The effect of this, and I will use subjective terms, adverse, the man buying a new car has tended to pay a premium for it; he has paid more money because it was restyled, but that styling change re-created in America something that is a phenomenon not available in the automobile market in the rest of the world to any such extent is the used car market.

The process that led one group of Americans to say I will pay a premium to buy this car which is new, and you may not or I may not agree that we will use our money to do that, but these Americans said they would also lead that group of Americans to dispose, at the end of a year, or 2 years, of a car that had an enormous remaining life in it, perhaps as much as 80,000 miles or 75,000 miles and permitted another group of consumers with different sets of values who said I don't care about styling change, I would rather have a 2-year-old Ford and save \$600 or \$800—I don't know what the exact number is—to buy that car. That phenomenon does not exist in European automobile markets to anything like the same extent.

The rate of styling change doesn't lead to the same rate of car replacement. As a result, a consumer in order to buy a car must be prepared in most instances to pay the new-car price.

I would hold out in a society like ours in which an automobile is so often a necessity as opposed to simply an optional decision on the part of a consumer that there has been an economic benefit to that. The man who didn't want style could buy a very much cheaper car in the market.

Some of our critics in this area of style sort of draw a picture for the Congress of all the 2-year-old cars in America being driven off a cliff somewhere into the ocean.

That, of course, is not true. Those cars do stay on the American road 10 years, they do move through the hands of perhaps three or four owners, and each of those owners with a different set of values or perhaps a different set of economic capabilities makes a judgment, I would rather have a 2-year-old car and give up the prestige or whatever other attribute he sees in it of a new car because that is a better value to me.

The historical reason for the styling change I have to say was a marketing reason. It was believed that it would attract more new people to our showrooms and sell more new cars.

Senator PASTORE. Has the industry changed that as a result of a lesson we have learned from foreign-made cars?

Mr. NEVIN. I think in part, and I think it is also a function of the number of cars that are offered. It was not more than a decade ago, Senator, that Ford offered a Ford car for sale and Chevrolet offered a Chevrolet car and Plymouth offered a Plymouth car and there was one car you associated with a dealership.

Now, you go into a dealership and you find as many as four or five different kinds of cars. We have got the Thunderbird, the Galaxy, and so forth. Ford has six different kinds of cars.

Six years ago you could run a picture in Life magazine on introduction day and say here is the new Ford and most of America 2 weeks later would know what the new Ford looked like. I do not think it is true anymore. With each maker having six or seven different kinds of cars, most consumers have doubts about what the difference is between perhaps one or two of the cars we made last year, much less what the styling differences are between this years model and last years model.

So, the advantage of styling change as a marketing tool is changing because of the variety of cars offered in my opinion now—I am answering subjectively—the demand for it is changing because so many more Americans are looking for more functional values, and our capability to provide it is changing because of our desire to hold down prices and to meet these other more pressing demands.

I think all those things are working in the same direction, which is to reduce the rate of styling change. My response to your prior question, sir, was only to indicate that I did not think that was going to have a dramatic effect on price in the near future.

Senator PASTORE. Relating this to number of jobs, would the number of jobs be affected considerably if we didn't change our styling so often?

Mr. NEVIN. No, sir.

Senator PASTORE. It wouldn't?

Mr. NEVIN. No, sir.

Senator PASTORE. It is not related at all? I mean appreciably?

Mr. NEVIN. I am going to reach for a number, but I think that probably we are going into an area where substantially more than 75 or 80 percent of new car sales will represent replacements of cars. You know, it isn't new families deciding we want to own cars. We have an economic society where most families do own a car.

I think the combination of the growth in the number of families in America, replacement of cars that are already on the road would suggest that automobile sales would not be appreciably affected over the longer term by reduced styling.

I do not expect that to have an adverse impact. To the extent we give a consumer other values he seeks, it could have a favorable impact on jobs. That is a terribly subjective answer to your question, but I wasn't prepared factually to answer it.

Senator PASTORE. Thank you.

Senator HART. The Senator from Kansas.

Senator PEARSON. Thank you, Mr. Chairman.

I first want to associate myself with the Chairman's complimentary remarks concerning your testimony. I recall that when this committee

a year or so ago addressed itself to legislation concerning standards of quality for automobiles and warranties Mr. Nevin was the only industry spokesman who came up to help us make a record on that subject.

These hearings deal with the question of safety, with the inevitable damages to property, injuries, loss of life. We have sought, as lawyers say, to make the parties whole. And for a long time our instrument to do this has been insurance.

But this system now is breaking down high premiums and limited coverage. So I take it, from your testimony this morning Mr. Nevin, that it is the position of your segment of the automobile industry that the burdens upon you to meet the new safety standards, and the burdens upon you to fulfill the requirements of the elimination of auto pollution are so great that that is about all the industry can do now without the added responsibility of solving the insurance problem.

MR. NEVIN. Yes, sir, but further than that—

Senator PEARSON. But there is an indirect aid in the safety improvements that you are making pursuant to the Federal requirements?

MR. NEVIN. I would hope my testimony would not be understood by the committee to represent an automobile industry versus the insurance industry position. The insurance industry—

Senator PEARSON. I understand that. I stated it poorly.

MR. NEVIN. No, I just wanted to make sure it was understood. The insurance industry, as I understood it, best aggregates again, suffered an underwriting loss of 700 million last year. In other words, what they paid out exceeded what they took in in premiums. No business enterprise is going to continue on that basis, and it is going to result in more uninsured motorists and more price increases. I simply doubt here that there is evidence available based on the bumper standard and the indicated savings to policyholders, based on the cost structure of the industry, that the savings you seek in insurance costs can accrue to the American public through changes in car design in the near term.

The first disadvantage we have is there is no way we can change that car population that the industry is insuring for 7 or 8 years. Even when we take a dramatic kind of step, dramatic relative to past steps, the impact on insurance premiums, 4½ percent, the number I quoted in the testimony, is so small relative to the rate at which insurance costs are increasing each year. If the insurance industry was making a fortune and increasing rates at that kind of rate, I would have a different kind of testimony. But there is no evidence they are doing that. They are not making the kind of profits that would attract capital. I doubt that the emphasis that has been placed on damageability will deal with their problem.

Senator PEARSON. You place great emphasis on the continued consumer freedom of choice. Isn't that precisely the road we have been going?

MR. NEVIN. I will give you one example. I think that the role of consumer freedom of choice is one of the reasons why imported cars grew so rapidly in the United States in acceptance; the American consumer had the freedom to accept values in cars that had not been previously offered. It is certainly one of the reasons for Detroit's response to that kind of a market. Two years ago perhaps 5 percent of

our sales were in a car like the Maverick. Today we have got a Maverick, a Pinto, a Comet, and a Capri out there on the market, and roughly 25 percent of our sales in this model year have come from that kind of a car.

This area of consumer choice, I think there is a great difference in what damageability characteristics a consumer might want to pay for, depending on whether he lived in Detroit or Boston or Providence or Washington—high-insurance-cost areas—or lived in Cedar Rapids or an area where insurance costs were much lower. I think preserving that choice is important. I think if a consumer decides that he puts a higher value on fuel economy, on overall length of the car, even on aesthetics, so long as the Congress, so long as the committee takes action to make sure that the consumer has the information——

Senator PEARSON. Now, how do we do that?

Mr. NEVIN. Our recommendation here, sir, is that you proceed with just what is in S. 976, that you have the Secretary of Transportation do the study of relative damageability of cars. Now, we would hold out that we should not be asked to test our cars against those standards before we can sell them until you develop the relationship between the results of those tests and insurance premiums. But if the Secretary were to undertake the study that is incorporated in this legislation, S. 976, if he were to determine that there was a difference between the damage susceptibility of the right front fender——

Senator PEARSON. But how do I make that understandable to John and Mary Brown in Topeka, Kans.?

Mr. NEVIN. I think we may on occasion underestimate the American consumer. In fire insurance I would doubt there are very many consumers who are unaware of the fact that they pay less for fire insurance if they own a house in the city of Detroit where you have got a very sophisticated fire department and a lot of water than they pay if they are in the suburbs.

The consumer reaction to the cars we have introduced recently, the low-priced car, suggests that the consumer who wants fuel economy, who wants repairability seems to have some very informal but highly sophisticated ways of finding out who is doing what for him.

Senator PEARSON. I do not disagree with your point and I do not disagree that the Government has some responsibility. We are educating so many people on so many things today, that I wonder what the saturation point is or how effectively we are doing it.

I thank you, sir; and I thank you, Mr. Chairman.

May I say I had a note from our colleague, Senator Griffin, that he would be here—and the record shows, he is a member of this committee—but the minority leader is gone and he has to hold the floor.

Senator HART. I was momentarily distracted by the concept it is cheaper to get fire insurance if you live in the city of Detroit. That depends on where you live.

Mr. NEVIN. Yes, sir.

Senator HART. Admittedly it is a sobering figure that you show on a chart here. As I say, my impression from the Bureau of Labor Statistics' statement was that there was about a markup of about 100 percent wholesale to retail——

Mr. NEVIN. Let me accept that and use \$100 instead of \$162. I think we can correct the record later.

Senator HART. Then the increase to you—take the 1970 and 1971 table there, that shows a \$29 retail increase—

Mr. NEVIN. Twenty-nine dollars retail increase for safety and emission equipment; it is greater than that in total.

Senator HART. For purposes of the discussion without holding either of us to this BLS impression that we have, that would be \$14.50 wholesale.

Now, we move to the column where you get this estimated 1975 increase which is a cumulative thing that so disturbs you; that would be the estimated retail increase associated with the standards, safety and air, and if we are correct on the wholesale figure, we would reduce that by about half, and it is still very substantial.

Mr. NEVIN. No, sir; the \$223 figure is from the report of the Administrator of the EPA to the Congress, and that is described in that report as the addition to the purchase price—that is not including profit, et cetera—that is the addition to the purchase price. I think that \$223, my view is the consumer probably buys what is shown as \$162 which is closer to \$135 or \$140. The \$223 is constructed in a different manner. We commend the EPA for being so candid, because accomplishing these goals is one that will cost money. That is an EPA number; it is not our number, sir.

As a representative of Ford I commend the EPA for the candor with which it has been willing to discuss the fact that the accomplishment of these very urgent public objectives will involve effects on prices. I think that candor is desirable and I think the American public is going to be willing to pay, but far more willing to pay when it has been warned in advance and it buys in advance than it will be if somebody suggested that they are going to get all this for free.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Mr. Nevin, so that I can understand your argument that we do not mandate bumper standards, let me ask you again what your estimate, retail, for bumpers will be to meet the 5-mile per hour front and rear barrier crashes without sustaining damage?

Mr. NEVIN. Ford would estimate that 5 miles per hour front and rear will involve a price increase of about \$100.

Mr. SUTCLIFFE. Have you received any figures estimating component costs for that bumper capability?

Mr. NEVIN. No, I have not. But no design decisions are made without some pretty careful approximations of probable cost. The designers know what kinds of configurations they are going to use to accomplish the objective, and they have what you would have to describe at this point in time as estimates of what kinds of costs they will ultimately incur from suppliers in order to purchase the components that will be added to the car.

Mr. SUTCLIFFE. You think the \$75 range is appropriate for the manufacturers' cost for the bumper protection?

Mr. NEVIN. Well, I don't want to overqualify these figures. If it is a hundred dollars at retail, it would turn out to be about \$75 at wholesale, \$75 to \$85.

Mr. SUTCLIFFE. In your statement you say that the bill, S. 976, promises no offsetting reductions in insurance and repair costs for the American consumer.

From the diagnostic inspection provisions of the bill, the Department of Transportation has estimated a 0.7-cent-per-mile maintenance and operating cost reduction. That translated into the trillion miles driven by car owners in this country amounts to an annual savings of \$7 billion.

It has been estimated that the prevention of unnecessary or improperly done repairs would add another \$6 billion of annual savings. Savings resulting from detections of defects in used cars prior to their sale has not been ascertained, but would reflect an additional amount of savings.

In the insurance are the titling and motor vehicle registration provisions that have been estimated to save \$1 billion of the annual loss of \$1.5 billion. And conservative estimates for property damage premium reduction for bumpers, 20 percent, for example, of the \$8 billion annual premium would after a certain population figure amount to, conservatively, \$1 billion of savings.

Senator HART. I do not know what it is made of and I would hope that we can get for the record the elements that go into it. I continue to question it, because if you take, as one example of the relationship between the total price I pay when I buy a car to that element which is attributable to safety and emission removal, your Galaxie in 1970 sold for \$3,026 and the 1971 Galaxie sold for \$3,246. That is an increase of \$220. If this tabulation is correct only about \$30 of that \$220 increase was standard related.

What I would like to find out is, if it was only \$30 to \$220 between 1970 and 1971, what will it be in 1975 as between the \$450 to \$600?

Mr. NEVIN. Perhaps I can read off some numbers for you, Senator, because I have tried to represent these prices as being solely those associated with safety and pollution. The total price increase in cars in 1968 was \$139. Now, I show \$70 as being associated with safety and emission by the Bureau of Labor Statistics. There was another \$69 associated with other considerations. There was another \$58 increase in car prices in 1969. We show \$31, the difference between \$70 and \$101 in the tab. So there was \$27 more associated with other factors.

In 1970, the increase was \$107 in total, \$32 of which, the difference between \$101 and \$133 associated with emission and safety, and the big increase was in 1971. The total increase, the average American car went up about \$220, and that was \$29 for safety and emission, and \$199 in reaction to the inflation.

That price increase I believe in a Bureau of Labor Statistics press release was represented to be a 5.9-percent increase in the price of new cars. That is adjusted with the safety and pollution costs of the increase adjusted out. That is in a year in which the cost of living in other areas of the country went up by over 7 percent and it is in a year in which the automobile industry for the first time in 5 years took any consequential price action at all.

I think you are familiar with the history of the industry in terms of profits. In 1966 when we began this process, the Big Four automobile manufacturers in the United States were earning profits that represented 6.6 percent of sales. By 1970 profits as percent of sale were down to 2.6 percent. Automobile profits are very substantially below those of Dow Jones industrial companies, et cetera, and I think the record indicates that we have not succeeded or attempted, however you

wish to phrase it, in passing on our costs; if we had our profits would not have declined as they have. We are not earning profits as a percent of sales as good as those of the other companies in the Dow Jones, for example, and I personally see no great hope—I certify, and this is really in response to Senator Pastore's question, too, that faced with these financial problems, every effort is being made to cut costs in other areas, but I can see no great hope for absorbing these costs.

Mr. NEVIN. No, sir. The only collision premiums that are paid by the American society add up to \$2.7 billion. That is Best's Aggregates number on collision premiums and the only offer of reduction has been associated with collision premiums, not the total insurance costs.

Mr. SUTCLIFFE. I think this is an appropriate time to analyze the cost figures, because you are giving the figures on the basis of collision coverage.

My figure of \$1 billion was presented upon a reduction savings based upon premium cost for the property damage area as a whole, including liability insurance.

So, let me turn to your point about insurance cost savings and price differentials.

How are insurance rates set in this country?

Mr. NEVIN. I am simply not qualified to respond to that. They are certainly not set in response to changes in automobile design based upon the record.

Mr. SUTCLIFFE. Based upon the record.

Theoretically, does a company have a right to set its own price, or does it have to go to a State insurance regulatory authority?

Mr. NEVIN. It goes to State regulatory authorities, but those regulatory authorities vary widely in the amount of flexibility they will permit in the establishment of premiums.

Senator PASTORE. On that point, just so we can clear it up, it does depend on what the insurance company has to pay out in damages. I mean the more a car is damaged and the more they have to pay out, the higher the premium rate. The less the damage for any reason and the less they pay out, the premium comes down. That is fundamental isn't it, regardless of who sets it? I mean that is how you justify a rate before any utility board.

Mr. NEVIN. No, sir, I don't mean to quarrel with you, I am only expressing a point of view here, but in an industry where you have got 36 cents of every dollar being used to cover administrative costs, in an industry in which when they are appraising something like a 5-mile per hour bumper, they say 20 percent of the collision premium which would be less than 5 percent of the total premiums and premiums have been going up at a 10-percent per year rate, I really doubt whether what you are seeking to accomplish, which is a reduction of insurance rates, is going to be accomplished by changing automobile design.

Senator PASTORE. I am not justifying the administrative cost on the part of an insurance company, maybe that is subject to investigation too—as a matter of fact. I think we have tremendous concern in that area—but all I am saying is this, that the more that the insurance companies have to pay out for damages to automobiles that are insured by them, the higher the rate goes.

That is the argument they make when they go before a utility administrator. It might be well be that the chances are their administrative costs are too high in comparison with what their disbursements may be, but that is another problem.

But fundamentally, if we can get these cars in a position where the damage is less, won't we be in a better position from the public interest in arguing before any rate increase board that they are asking too much for the premium?

I am sorry for the interruption.

Mr. NEVIN. I would certainly not dispute the point. I would question the priorities, sir. If those rates are going up at a rate of close to 10 percent a year, if car redesign can't change the car population for 7 or 8 years, I do think I would put a higher priority on dealing with the problems within the industry.

I know the industry witnesses, the automobile insurance industry witnesses, have placed great emphasis on car design. I can't accept the idea that the American consumer is going to get his maximum benefits if you impose vast new damageability standards on the automobile industry at a time when you are asking the industry to meet safety and air pollution standards which I am sure you would judge to be higher priority and at a time when all the evidence available says that there will be no significant changes in automobile insurance premiums as a result of those changes in design. That seems to me to be established by the 5-year record under the Safety Act, where under all the promulgated standards we haven't had the first example of someone saying this is worth a reduction of the insurance premiums.

Senator PASTORE. That is an indictment of the insurance industry, but if we can promote a bumper which at the rate of 5 miles per hour doesn't cause the damage of \$450, and those are figures given to me by the staff—we have had instances in the record where an automobile going 5 miles an hour and it hits a solid barrier and the damage is \$450. I don't think you can get many cars to go 5 miles an hour today; they are geared up so high.

Now, if you can cause \$450 worth of damages going five miles an hour, just imagine what the damage would be to an automobile if you hit an object going 20 miles per hour. You are telling me if you can eliminate that damage that it won't affect the premiums? There is something wrong somewhere.

Mr. NEVIN. No, sir. I am telling you that the people who are establishing the premiums are saying if you eliminate that 5-mile an hour damage, they will reduce premiums by 4.7 percent. I wasn't representing what should happen, and I don't presume technical competence there. I was simply stating that one insurance company in all America has said it would reduce premiums as a result of that 5-mile an hour bumper. The others have overwhelmed America by their silence except when they talk about automobile design.

Senator PASTORE. We will get them here to talk to.

Mr. SUTCLIFFE. Mr. Nevin, you would agree, then, that an insurance company cannot unilaterally determine its rate reduction, that this is based upon a filing with the State insurance commissions?

Mr. NEVIN.

Mr. SUTCLIFFE. So the 20 percent was not necessarily a fixed figure for what premium reduction rates would be?

Mr. NEVIN. I would have no reason to challenge any statement you make on this subject, but I don't think it is appropriate for me to attempt to testify as to how the insurance industry sets its rates.

Mr. SUTCLIFFE. But it relates to the premises and assumptions you make in your testimony. Let me suggest that you look at your chart entitled "Indicated Effect of 5-Mile-Per-Hour Bumper on Automobile Insurance Costs."

Now the savings presented there seem to be predicated on two assumptions: One, that only a 20-percent rate reduction will be required by State insurance authorities, and that the present liability system for compensating auto accidents will be retained.

Are those two fair assumptions for the information on that chart?

Mr. NEVIN. Yes; but if I may, I would like to get out of the tone of "only." Twenty percent was offered by one company in this country, and no one else has followed them, and that company has said that for 5 miles per hour and 4 miles per hour it will give 10 instead of 20. That is the record to date.

The statement the insurance commissions won't force larger reductions, you are right, I can't assure you they won't. But I will ask you to look at the record of 5 years of standards under the Safety Act in which to my knowledge no insurance commissioner in any State has said why is it that now you have got a collapsible steering column the American public shouldn't get a lower liability premium charge or now that you have better door locks so people don't pop out of cars—and there is a great number of thought-out standards that have gone into automobiles—and I know, sir, of no evidence that that's been recognized in insurance premiums and all I'm urging is that the Congress establish that relationship before it imposes, on this industry, another set of testing and standards at a time when we're struggling to try and achieve what I judge to be enormously higher priorities in the areas of safety and air pollution relationship that that has had any effect on insurance premiums. And until you are certain you are going to get the kinds of savings you are promising the consumer, we would urge you not to impose that kind of new workload on us, that kind of new possible price increase. And I said "possible increase" on the American public, because the burden of what they are going to carry is going to be high enough. I hate to try to defend absolutes here. I am trying to defend a position with respect to priorities.

Mr. SUTCLIFFE. I am just trying to understand the picture you depict on this chart.

Where on this chart have you depicted the potential savings to the consumer who would not have to pay his \$100 deductible because his car wasn't damaged in a 5-mile-per-hour crash? Those savings are not reflected on this chart: is that correct?

Mr. NEVIN. No, in the last sentence of the testimony associated with that chart, I say:

If the consumer is to benefit from the new bumpers, very major gains would have to accrue to uninsured motorists or to persons incurring costs as a result of collision coverage deductibles.

I attempted to cover that point in the testimony.

Mr. SUTCLIFFE. Have you calculated what the premium reduction might be if property damage losses were paid on a first-party no-fault basis only?

Mr. NEVIN. No sir; I have not. I think that the major impact of that, and I suspect you do too, would be on the administrative cost as opposed to the damage payout to policyholders. I have not attempted to calculate it, and I wouldn't have the basis to calculate it. In order to have that information before the committee, which was the basis for that chart.

Mr. SUTCLIFFE. Let me present information which was given to the House Interstate and Foreign Commerce Committee by Prof. Samuel Loescher, of Indiana University, who estimated that premium reductions would be increased by a multiplier of three if a first-party compensation system were adopted.

He said:

The magnitude of specific differentials by model on a no-fault collision option would triple over current levels.

Now, applying that formula to your chart, this would mean that even a 20-percent reduction in collision premiums on a first-party basis would increase savings from \$540 million to \$1.6 billion.

Mr. NEVIN. But the other billion dollars you can get without the bumper.

Mr. SUTCLIFFE. This was a savings reflected on the basis of combining and rating a car owned by the individual. You know what car you are insuring, and, therefore, your premium reduction capability factors out at three times what it would be when you have to break out between your liability insurance and your collision premiums. In other words, he is combining the collision premium payout and the property damage payout to get a factor of three to indicate what the potential savings are under a first-party system as opposed to the present system, and that does not take into account the reduction in administrative cost because that is not factored into the premium benefit payout. That would come through other premium reductions reflected in the total \$8 billion assessment, premium assessment for property damage.

Mr. NEVIN. You have just lost me.

Mr. SUTCLIFFE. Let's assume that a change to a first-party system, as Professor Loescher has testified, produces a multiplier—

Mr. NEVIN. I am not qualified to comment on the professor's testimony. I haven't read it, and I am not familiar with the data he used. I have no reason to quarrel with you, but I would like to avoid questions on testimony that I have not had the opportunity to review, to read or to understand.

Senator HART. Maybe I could help counsel and the committee and you.

Mr. NEVIN. Thank you.

Senator HART. Maybe we could do an arithmetic problem here, making some assumptions, without accepting the assumptions. Let counsel state the savings that the professor testified would result and then apply them to the figures that you have presented here.

Mr. SUTCLIFFE. I simply wanted to point out that the chart in your statement may have a different result if you put the insurance on a first party basis according to the testimony of Professor Loescher.

In other words, if we are considering S. 945 and S. 976 simultaneously, we have to try to understand what impact changes in the compensation system might have upon the total savings resulting from property loss reduction standards.

Using that factor of 3, the savings from the total premium dollar collected comes up to 13 percent rather than the 4.5 percent.

Mr. NEVIN. No, sir; I just understood your conclusion. I do not disagree.

The reason why many people in this country have supported and many of the members of this committee have supported so-called no-fault insurance is the belief that that will substantially reduce the total premiums that the American public has to pay to get the same kind of coverage from automobile insurance, substantially reduce the total premium.

Now, if you presuppose—and let me pull a number out of the hat, because I don't claim competence here, I do support what you are trying to do in the no-fault area, in trying to find better solutions, but if you presuppose the American public is paying \$100 today for a given form of coverage and presuppose that that coverage could be made available to the public for \$80 under a no-fault system—I don't want to represent that is true, I am just using it as an example—then at that point any moneys that you put into the car to reduce damageability will have a lesser payout than they would have under today's system, not a greater payout, because the consumer would be paying less money in the future under that system to get the damage paid for than he is today, and, therefore, the payout, the possible payout to him in terms of reduced premiums associated purely with car design would be lower.

I would have to go back to that—I am not familiar with the testimony—but to the extent you reduce the basic cost, then clearly the percentage further reduction that can accrue as a result of car design is going to be reduced and the payout for any costs that go into the car to accomplish an improvement will be longer and economically less feasible.

Senator PASTORE. You predicated this on a savings of \$20 on no-fault. What if the savings is \$80 out of \$100.

Mr. NEVIN. Then it is that much harder, I think, Senator.

Senator PASTORE. For whom?

Mr. NEVIN. It is that much harder to justify any addition to the car's cost. Let's assume for the moment, you assume a design feature, let's take a 5-mile-an-hour bumper at \$100. If the consumer is paying \$122 for collision coverage today, a 20-percent savings may have an attractiveness to him, \$25 a year the first year, perhaps it declines to \$17 in the second or third year.

If the consumer is only paying \$60 for the same collision coverage, the hundred dollars payout isn't going to be nearly as attractive. Collision is really no-fault coverage as it is written today, because you get your car covered regardless of whether it was your fault or somebody else's, so the principal applies more to the property damage number than it does to collision insurance, because in effect collision coverage is no-fault today.

That is the portion of the policy that pays the damage to my car when I bang into someone else's and it is my fault.

Senator PASTORE. You see you have lost me now.

Mr. NEVIN. We are now together, sir.

Senator PASTORE. Let's go over this again.

You pay \$100 more for an automobile because you have this bumper that gives you protection against an accident, right?

Mr. NEVIN. Yes, sir.

Senator PASTORE. If today you are buying insurance, you are saying you are paying \$122 per year for premiums. Let's assume you cut that premium down in half, and you keep your car for 5 years, are you telling me that you are not saving money?

Mr. NEVIN. No, sir.

Senator PASTORE. That is the argument you are making?

Mr. NEVIN. No, sir.

May I ask you to turn to this chart in my statement.

Senator PASTORE. That is your chart. I don't care about the chart.

You see, you are predicating your presentation here today—I am not quarreling with you. I think after all you have a perfect right to state your case and you make a good case for the Ford Motor Co.

Our job here is for the consumer and our job here is for the general public. All we are saying is this, today under the construction of the front of the car and the makeup of the car, with the kind of a bumper that you are putting on it or without the bumper that you are not putting on it, the result is that at 5 miles an hour sometimes you create a damage of \$450.

We are either trying to cut that down or eliminate it by the construction of the bumper. You come here today and have said, "Gee, if you do that it is going to cost the consumer a hundred dollars." I cannot question that. You have priced the car and it is going to cost the consumer a hundred dollars.

All we are saying here is if we get this insurance industry in a proper context and we get ourselves under no-fault insurance where we can avoid all these astronomical administrative costs that you have pointed out here today, that we can make an appreciable discount in the premium that an individual has to pay, that over the years while he is running that automobile the savings on these premiums will more than pay him for the extra cost of \$100 when he bought your automobile.

That is all I am saying.

Do you dispute that?

Mr. NEVIN. I would dispute it with respect to some consumers, Senator. Without hypothesizing, let me give you two examples. The consumer in Washington, D.C., who owns a Galaxie and pays \$112 in collision insurance gets 20 percent and he starts off with \$25 a year, he gets \$18 in the second and third year, and \$16 in the fourth and fifth, I suspect would find the \$100 premium on the car attractive. I suspect he would be happy to pay it, would be glad to have it.

A man who is buying a Pinto, a lower-priced car, who lives in Cedar Rapids, Iowa, and who has a basic premium cost for collision coverage of \$48 as opposed to the \$122 for a larger Galaxie in Washington, D.C., who would only get a \$10 saving in the first year, \$7 in the second and third and \$6 in the fourth and fifth would be far less attracted to buying it, and I don't mean to confuse you, I am simply concerned that that kind of action—

Senator PASTORE. Yes; but if you have one fellow in Grand Rapids that you talk about and you have thousands in Washington, D.C., I mean where would you put your emphasis?

That is what we are dealing with here. We are dealing with the whole Nation.

Now, you can pick out exceptional cases. I know that. There is always an exception to the rule. There may be some localities where you may be right, but we are talking here about overall, in the long run. Wouldn't we be better off if it cost a little bit more to the consumer? After all, look, anything that Ford puts on an automobile, anything, whether it is a Federal regulation or the decision you have made, the consumer ultimately will have to pay for it.

The only thing we are trying to do here is to gage our priorities in such a way that the consumer once in his lifetime will come out the winner, and up to now he has always been the loser.

Mr. NEVIN. Senator, I am not—I guess one of the points I have not succeeded in making clearly, is I am not certain that the choice is between no 5-mile-an-hour bumpers and everyone must have them on every car in America. I am not sure that we wouldn't be better off if you had a system of rating in insurance—let's say that the 20 percent is valid, let's say that is what the consumer should get—then, I see no reason why an American consumer who says: "If I live in Cedar Rapids I don't live in New York, I don't have this risk, and therefore I don't want a 5-mile-an-hour bumper. I will buy a car that is a hundred dollars cheaper that doesn't have it," should be excluded from making that choice. We do not impose that decision on him with respect to men's wear. I can buy all kinds of shirts that have varying washability characteristics. The Federal Trade Commission or the Congress would certainly want to make sure that a maker did not suggest one shirt could be washed in the washing machine and the other has to be dryclean, if that wasn't true.

But to the extent that it is true it doesn't seem to me there is any great public interest served in saying to the man who is willing to pay to have his shirt drycleaned, or fire insurance on a house is a better example, than a man who wants to live in the country, even though premium rates are higher, that he cannot do that.

The insurance industry is doing that today. They put substantial surcharges on high performance engines for example that go into a car. I really do not see why you can't have consumer choice and the benefits you are seeking, sir.

Senator PASTORE. We did that with television sets not too long ago in order to promote UHF in the public interest. We required that as a matter of law all sets be all purpose. We might have to do this in automobiles, because the number of people who will benefit will greatly outweigh those people who might be in the exceptional cases.

And the Congress of the United States in meeting this problem will have to make that decision. I get the point that you are making, but the point still remains there is some substance to the arguments that we are making.

Mr. NEVIN. Yes, sir, and I hope you understand—

Senator PASTORE. If you were sitting up here rather than down there, you might be asking the same questions I am asking and you may be a little amazed at the answers that you are giving me.

Mr. NEVIN. I don't mean to—

Senator PASTORE. I don't mean to be impertinent at all, but you see your function is just a little different than ours. We are listening to

you, and you make some sense in some areas, and then in other areas your responsibility varies from ours. We have a different responsibility.

We are not trying to encroach upon the automobile industry. In fact, we think it is one of the greatest things that ever happened to this country. I think it is one of the finest things that has happened in the world. I am not here to deprecate the Ford Motor Co. It has given a lot of people a lot of jobs, it has fed a lot of families, but we are beset with the situation that today when you get a little bit of a dent in your car you have to go to the repair shop and take your house mortgage with you.

Mr. SUTCLIFFE. Mr. Nevin, you argue that the Federal Government not mandate bumper requirements because you think that the consumer choice in the marketplace will cause manufacturers to build bumpers with higher damageability protection characteristics.

At the same time you tell us that you are very suspicious about the way in which insurance premiums and the cost savings reflected in those insurance premiums will cause consumers to make choices in favor of cars with damageability protection.

Mr. NEVIN. I did not mean to use the word suspicious, if I did use it.

Mr. SUTCLIFFE. I am putting words in your mouth, then.

Your chart that you have shown us shows, according to you, that only \$24 price differential would be reflected under the present reparations system. Does it make sense to you, again going back to Professor Loescher's statement, that that \$24 figure would be multiplied by a factor of three under a first party reparations system, so now the consumer buying the car, the average consumer, would have an effective savings of \$72 a year rather than \$24?

Mr. NEVIN. If that was the proposition available to me, I would have been out of here by 10:15. If the proposition was \$100 of cost being added to the car and the consumer would get back \$60 or \$70 in the first year, I would want to sell that. I can't imagine anything that I would find easier to sell to the American public than that kind of a savings.

So, I don't quarrel with what view I would take if we could put a hundred dollars of cost into a car and save the consumer \$70 per year. There is no question as to what view the Ford Motor Co. would take on that kind of a proposition. We are not aware yet of a system that is going to produce that result.

Mr. SUTCLIFFE. But if there were a system that could produce that result—

Mr. NEVIN. If there were that kind of a system, I would endorse without qualification actions that added a hundred dollars of cost to a car and gave the consumer \$70 back the first year, without any qualification.

Mr. SUTCLIFFE. So, your argument of freedom of the marketplace is dependent upon the consumer having signals for cost differentials and those signals—

Mr. NEVIN. That is the first argument.

The second argument would be a little different. I really do not believe that there is any consequential public gain by saying to the consumer who puts a very high priority—let me take the most con-

troversial of all arguments, esthetics. He likes pretty cars with damageable bumpers. You create a system that says to this man the price of a pretty car with a damageable bumper is \$75 more a year forever in an insurance premium, and he says it is my \$8,000, I am using it to buy a Continental, I would love to pay \$75 a year more in insurance premiums and have that damageable car. I would not take this position in safety or air pollution. You must restrict consumer choice in those areas to accomplish worthy public objectives that are high priority.

I doubt that you must do that in the areas of damageability. Let me use a more specific example. Overseas producers who have volume in the United States but whose volume in the United States is not consequential as a percentage of their total volume, and I will exclude Volkswagen for the moment, because their volume in the United States is very consequential as a part of their total volume, but producers, and I don't have any information that causes me to use these names, but Jaguar, Mercedes, the makers of a variety of overseas automobiles, it's perfectly possible that one of those producers could say the tooling engineering cost of a 5-mile-an-hour bumper for the 10 percent of our cars that go into America just isn't worth it.

Now, I don't believe that the public interest is served by saying to the American public you cannot buy Jaguars any more or Mercedes any more because in our wisdom you ought to have a 5-mile-an-hour bumper. If they offer some benefit to the American public, that the American public finds to be greater than that insurance savings, then I honestly see no reason for the Congress to decide that it must take action to prevent the American public from making that choice.

Senator PASTORE. What a big difference that would make to the balance of payments.

Mr. SUTCLIFFE. Let me ask you then hypothetically what your feelings would be if through inattentiveness you happened to run into the back end of that particular car you were describing, the \$8,000 car, perhaps a fiber glass body no bumper protection, you'd purchase 5-mile-an-hour bumper protection for your car, you hit him at 7½ miles, your car is not damaged, his car has \$800 to \$1,000 worth of damage on it. As a result your company that you are insured with has to pay the liability premiums and your policy is canceled.

What would your position be in that situation?

Mr. NEVIN. Let me ask you to define which of the two insurance systems I am answering the question under. I was just answering the last question as if you had already passed no-fault. Have you passed no-fault when I'm asking this question or is it still a matter of serious public issue?

Mr. SUTCLIFFE. Let's answer the question both ways. Under the present liability system, what would your feeling be?

Mr. NEVIN. If you are going to keep a liability system that says that if I have no-fault I am entitled to collect from somebody else, then I would say that you have got to make sure that that system assures me that the guy who bangs into me is insured. That is one of the great failures of the system we have right now.

I may do what I think is prudent and insure myself against damage I do to somebody else, but if somebody bangs into me and hurts my wife and my children I may find out too late he was not insured. So,

I don't consider an insurance system to be acceptable, whether it is no-fault or tort liability, that says some significant number of people may take risks on the highway of hurting me and I may through the luck of the draw end up uncompensated by that loss.

So, if you presuppose now that I bought my Jaguar and it is my fault, you can have a deductible, the insurance companies could impose that we will pay no more than the first \$100 or the first \$200 on a Jaguar, but I don't think that that problem is large enough to say that you want to exclude large numbers of cars.

MR. SUTCLIFFE. Let's go to the second situation where you are under a first party no-fault benefit. If you, through your inattentiveness, had hit that damaged prone Jaguar—

MR. NEVIN. Under no-fault it's no problem, I have to agree with you. If it is no-fault and I have got to pay for any damage done to my car, then my insurance company says Mr. Nevin you bought a Jaguar, the Jaguar has miserable bumper systems and you are going to pay \$50 more for your premiums a year and we're going to insure you. Then I have no trouble. Anybody can bang into me, and I am responsible. I agree it's more complex if you don't go to no-fault. But not so complex that I'd say that nobody can buy a car that doesn't meet the standards or that I would say that was desirable if the Congress could find an alternative. I don't mean to be so positive.

MR. SUTCLIFFE. But under a no-fault situation, then, you would only be responsible for your own car, and if you chose to buy damage protection for your vehicle, you would have that damage protection reflected in lower premiums. If someone else chose not to, they would have higher premiums for that particular car.

MR. NEVIN. The ideal system would be one where I carried the full financial burden of my choice which was to buy a Jaguar.

SENATOR PASTORE. If I understand you correctly, you would not oppose this legislation if it could be shown to you that where a person has to pay \$100 more to buy a car because of the safety features he would be saving commensurately and even more on his insurance policy, and you put the case if they could show you that you could save \$60 or \$75 the first year, you would have no opposition to it at all; is that correct?

MR. NEVIN. No; I said I would want the opportunity to sell that because I would try and sell it. I don't think, Senator, I would take the next step which is to say that I would want to make sure that anyone who didn't find that \$70 saving attractive couldn't take the course of action in the market he wished to.

There are many parallels. We don't require the American public to use plastic dinnerware because Dresden china is highly breakable. If the public is informed, if the public knows what it is doing—and I fully support and have supported in this testimony efforts to provide information—then, unless the Congress concludes there is no other course of action available, I see really no reason to impose a limit of choices on the consumers of automobiles. You don't do it on housing. You can buy a house that is frame in the country and pay a big premium to cover it with fire insurance.

SENATOR PASTORE. How does the auto buyer know that? Do you mean the auto buyer would go to the dealer where he has that option and the dealer would say if you pay \$100 more to get these bumpers you

are going to save a bill of \$450 damage because this bumper will cause \$450 and this one wouldn't cause any at all?

Don't you think there is a responsibility on the Congress to protect the consumer without the consumer being always placed in the position of caveat emptor?

Mr. NEVIN. I think it is a matter of degree, Senator, and I would give you one example.

The insurance industry has in the last several years put substantial premiums on cars that were equipped with high performance engines, cars that had big engines relative to their weight. They actually set a standard in terms of power-to-weight ratio where an engine had a certain amount of power relative to the weight of the car and therefore a speed capability that the insurance industry thought was excessive.

You have never seen anything dry up faster in America than sales of that kind of car. That suggests to me that the American car buyer did understand if I buy this kind of engine in this kind of car I am going to take an insurance premium increase of some consequence, and I am not willing to do that and therefore I am not going to buy.

It also suggests to me that the guy who bought a car with that kind of an engine must have had the same knowledge and said for my use I want to do it.

Senator PASTORE. If it would work out that way, Mr. Nevin, you may be right, but we have had too many experiences where freedom of choice has actually added up to caveat emptor.

Mr. NEVIN. I hope you don't think I am urging that on you, sir. I am not.

Senator HART. Senator Griffin?

Senator GRIFFIN. No questions.

Senator HART. Would you for the record submit whatever comments you might want to make on the amendments that involve controlling the odometer and the vehicle to in-use pollution inspection features?

Mr. NEVIN. Yes; I would.<sup>1</sup>

Senator HART. I appreciate the directness with which you have commented on the other proposals. I only regret the conclusions that you have reached with respect to them.

We certainly appreciate the testimony that you have given. Thank you very much.

Mr. NEVIN. Thank you, sir.

Senator PASTORE. Thank you, Mr. Nevin.

Senator HART. Our next witness and one of the too few examples that people cite of individuals that can affect the enforcement of the system is Ralph Nader, whose influence on the automobile industry has been not as great as he would like but it has been significant nonetheless.

#### STATEMENT OF RALPH NADER, WASHINGTON, D.C.

Mr. NADER. Thank you. Mr. Chairman, distinguished members of the Senate Committee on Commerce, I am grateful for your invitation to comment on S. 976, the Motor Vehicle Information and Cost Savings Act, which is designed to put more product integrity into the automobile and stimulate competitive forces which even the collusive auto

<sup>1</sup> See p. 1391.

industry cannot completely ignore in its continuing quest for greater fraud at higher prices for more millions of Americans.

The burden of this proposed legislation dwarfs the feeble provisions which are to be its tools. That burden is trying to stop the yearly toll of billions of dollars and unnecessary hazards imposed on motorists due to the calculated design, construction, servicing, and repair costs of the automotive industries—all calculated to create a series of repercussive consumer demands for goods and services which arise out of the deficiencies of the original motor vehicle's design and construction in the first place. The automobile industry, coldly and with slide rule precision, has developed a product which, from bumper to tail light to engine, supports a parasitic aftermarket, a many-billion-dollar-a-year market, marked by enormous and monopolistic company mark-ups on replacement parts. The most visible exploitation, bumpers that are fragile and ornamental, illustrate the millions upon millions of dollars which the auto companies make by requiring motorists to buy portions of their cars twice or thrice.

I would like to at this point illustrate what I mean here. This is, of course, one of many possible illustrations. This is the photo of a Mercury Montego with the hood very vulnerable to damage as well as posing injury to anybody who might be struck by the front of the car. The cost of the hood according to current prices is \$94.25. The cost to repair that front after a 5-mile barrier crash is \$402.11. These I submit for the record.

Senator HART. They will be received.  
(The illustrations follow :)

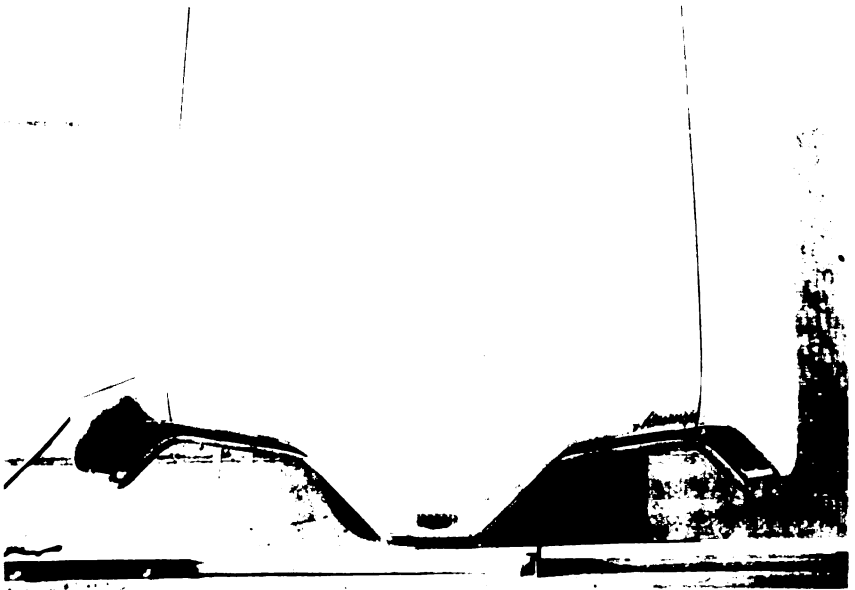
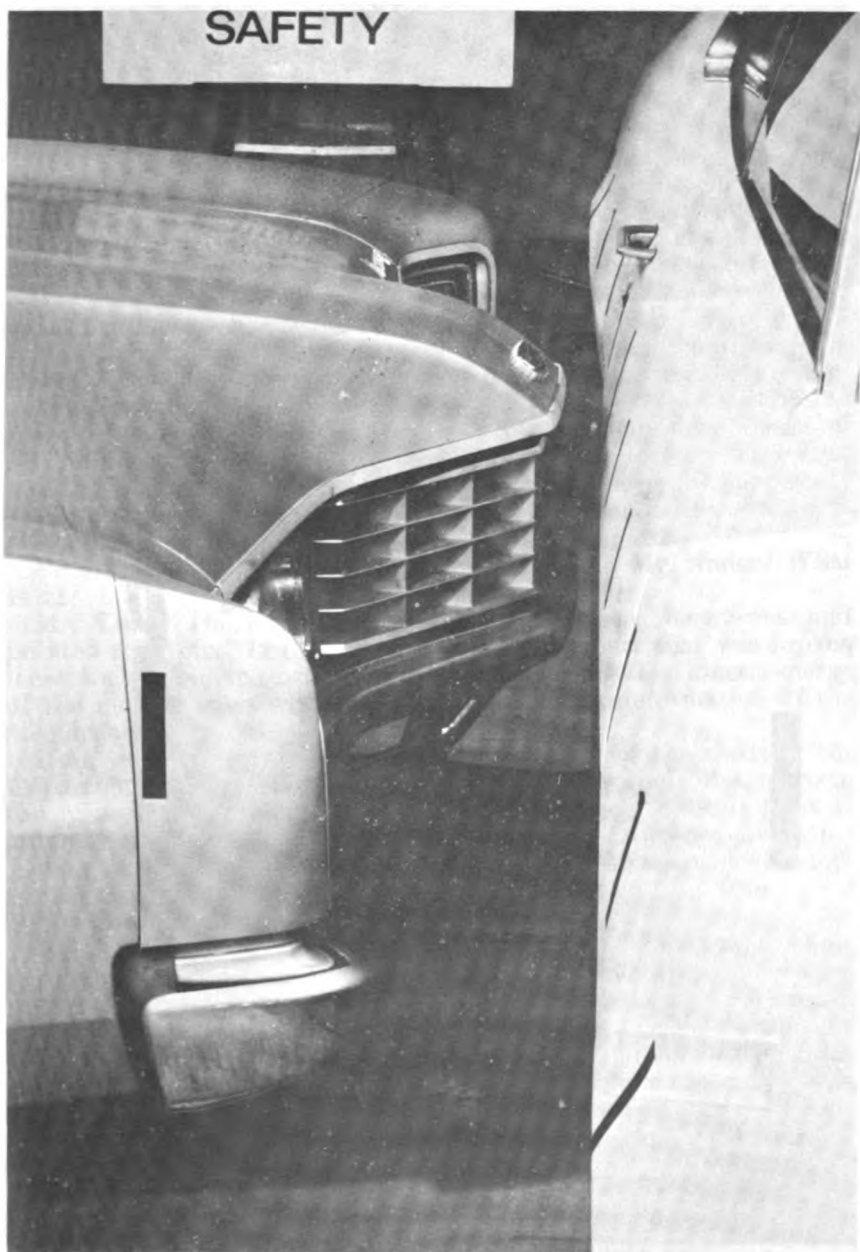
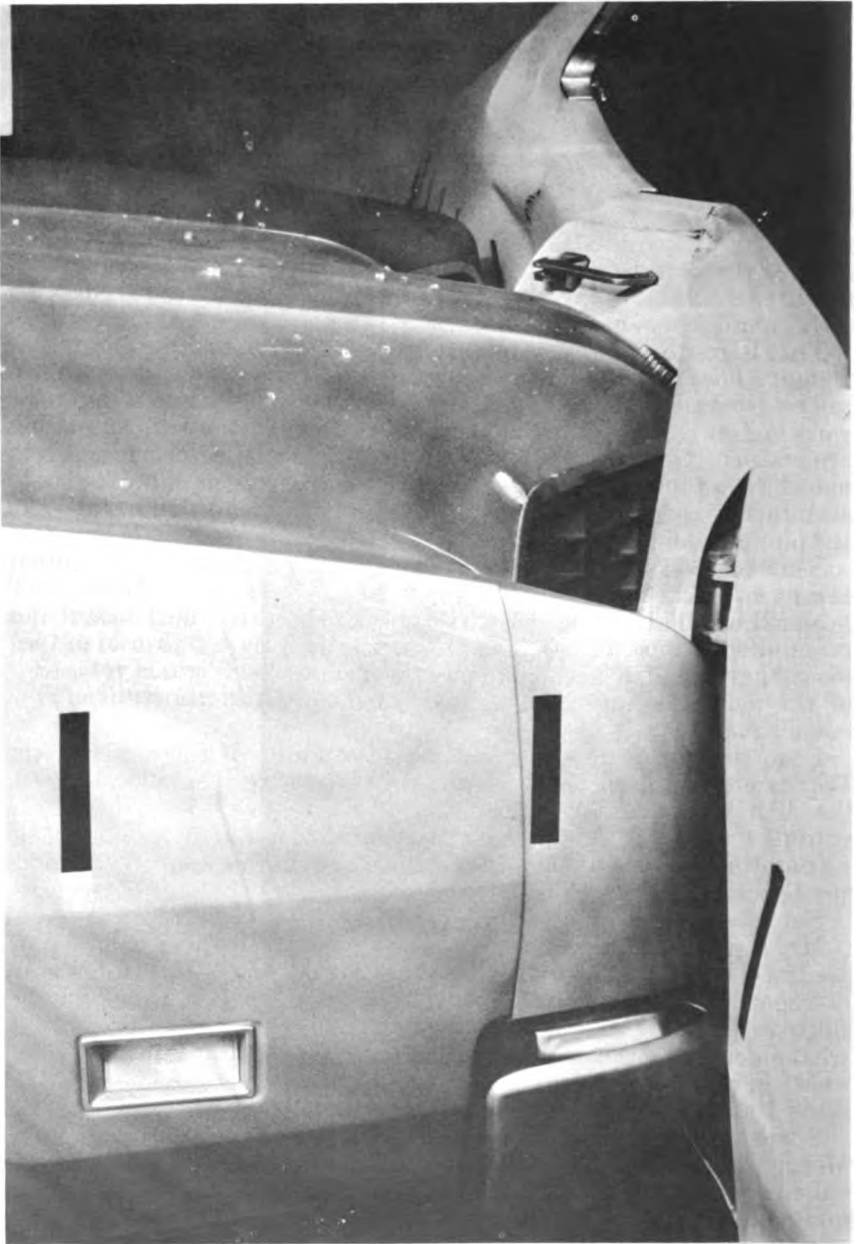


FIGURE 1.—Wedge-shaped design of 1971 Mercury Montego front end, believed capable of directing impacted pedestrians downward and under the car.



**FIGURE 2.**—“Battering ram” and pointed front end contour of 1971 Mercury Montego.



**FIGURE 3.**—Closeup of 1971 Mercury Montego front-to-side impact at 10 miles per hour with another 1971 Mercury Montego. Note fender extension “chopper” design cutting into side of impacted car.

**MR. NADER.** In addition, these fragile bumpers support a subindustry which sells us millions of dollars of bumper guards.

Also, I would like to interpose here the necessity for the committee to entertain alternative bumper design systems outside the auto industry, and there are many, and one I would like to just submit also later for the record comes from the Lawrence Radiation Laboratory where an emergency energy absorbing device was developed as a byproduct of a mission that the large radiation laboratory had to perform, covered by U.S. Patent No. 3,181,653 issued on May 4, 1965.<sup>1</sup> The device was further developed in 1960, and the inventor has assigned as he does under the law the patent rights to the U.S. Government through the AEC, available on a royalty-free basis, presumably.

This is just by way of illustrating that a patent search of our U.S. Patent Office by the Department of Transportation more systematically across the board might be able to find some of those individuals working on Government contracts who have come up with ideas that are eminently sensible and at least define the area of concern and at most have a fairly well-developed answer to the question, although only an industry can apply the capital necessary to bring the invention to the point of refined production.

**Senator PASTORE.** Can you describe that patent, Mr. Nader? What is it?

**Mr. NADER.** The device is an assembly of sheet steel membranes and pointed steel pins. If the pins are struck by a part that was broken loose, they would, in turn, puncture the membranes. The kinetic energy of the moving mass would be dissipated by the deformation of the membranes.

I am submitting this, Senator, as an example of the need for the Department of Transportation to begin searching their files, to go to the AEC, to go to NASA, to go to all these areas to see if there is spinoff technology for civilian use. Obviously, Lawrence Radiation Laboratory has one of the preeminent places in the scientific development area.

**Senator PASTORE.** I am familiar with it.

**Mr. NADER.** The importance of focusing on the bumper as it is now designed is that if the auto companies can so brazenly display such disregard for the consumer's pocketbook with bumpers which are for all to see and still try to justify them and still try to in effect circumvent what is obviously commonsense dealing with fraud, one can imagine what they will try to do once inside the vehicle where the visibility is much less and the components are more complexly interrelated.

I would also like at this point to illustrate the mentality of Ford Motor Co. I must say that in the last 5 years the industry has shown some progress. Five years ago they showed depravity. Now they show coherent depravity, judging by their statements, and the more they seem to change, the less there is actually any change.

Here is an advertisement in the April 30 *Washington Post* of this year where Ford displays their expenditure of millions of dollars over a national scope to try to convince an increasingly skeptical consumer that there is one auto company that even tries to listen. The section here deals with a statement "What you don't like about us."

The Ford ad quotes the following: "It isn't all roses, though"—that is rather gratuitous—"one third of our mail falls into the complaint

<sup>1</sup> See p. 1906.

category. People are mad about a lot of things, justifiable in many cases." Then they quote a letter from Mr. J. Highs, of Painesville, Ohio, as the following: "Why in the name of reason can't you people make practical, functional bumpers that will protect the car instead of adding to the damage that a collision of the most minor force causes?"

Ford concludes: "Ford Motor Co. isn't about to solve every gripe overnight."

This isn't a gripe that suddenly came to Ford Motor Co.'s attention, it is not a gripe that they have just been put on notice to solve overnight. It is a gripe that goes back at least years when bumpers lost all pretense of protection. It is a gripe that goes back to Mr. Henry Ford II's grandfather who certainly had better ideas as to how to build a functional bumper than his illustrious grandson. Yet this is the type of tripe that is fed to the American public where they can brazenly quote this type of complaint, forget about the past, forget about the billions of dollars lost and the profits unjustifiably made, and then say we are trying harder, we are listening for the future.

Senator Hart expressed one major impact on the consumer well on February 25, 1971:

American consumers spent \$25 billion to \$30 billion a year on auto repairs. Various studies on the quality of the work were presented to us. They rated the poor, unneeded, or not done work at amounts ranging from 36 to 99 percent. Even taking the low figure, that means consumers are wasting \$8 billion to \$10 billion that they lay out for auto repair work yearly.

The thrust of this bill is that a strategy of prevention concentrating on the disclosure of comparative susceptibility of automobile models to property damage and their crashworthiness, coupled with timely automated diagnosis through inspections, will save the consumer much money and improve safety. A sturdier, safer automobile reduces the likelihood of fraud and shoddy service in the repair, replacement and insurance markets. An ounce of prevention is worth a pound of cure.

Fragile bumpers which release between \$300 and \$400 worth of economic demand for 1971 models crashed at 5 miles per hour offer sizable opportunities for rapacious sellers. On the contrary, bumpers which protect cars at such speed levels or higher, would foreclose such opportunities.

Yet, without a recognition of the preconditions which permitted this pyramiding of costs—to the consumer—and sales profits to the industry, the proposed bill cannot be seen in its exceptionally modest context. These preconditions are:

1. An anticompetitive, collusive pattern of industry behavior, dominated by General Motors.

I will refer you to 11 recommendations by top staff of the Antitrust Division, economists and lawyers in the last 5 years, including former Assistant Attorney General Donald Turner recommending that there exists quite capable antitrust doctrine and economic reasons to break up General Motors and Ford to restructure a more competitive industry for better price, better quality, better innovation to the consumer—real consumer choice.

2. Criminal fraud or criminal negligence in the design of motor vehicles.

We don't think we can attribute any kind of motivations other than calculated criminal fraud to the auto companies who year after year

design these bumpers knowing full well the immense property damage and cost to the consumer and knowing full well that they have the available technology at virtually no cost to prevent such damage. It certainly can't be attributed to anything but knowing calculated criminal fraud.

3. Vast secrecy over facts and profits which the consumer has a right to know and obtain easily about vehicles, marketing practices and available, alternative ways of reducing costs and injuries.

4. The lack of any rule of law and enforcement dealing with this overworld crime backed by adequate inspection and enforcement resources.

I think if we judge the criterion for criminal intent, that is the knowing development of a condition which harms people, the knowing awareness of alternatives, and the profiting from the consequences of the harm, and the repetition of such behavior year after year after year, that fulfills the classic definitions of criminal fraud.

S. 976 clearly falls far short of treating these preconditions, although its pretensions are quite ambitious. The bill reflects the endemic weaknesses of political timidity to do much about the brazenness of corporate crime continually documented by studies and materials brought before this committee and the Senate Subcommittee on Anti-trust and Monopoly. If after being exposed to details about the auto industry's massive thievery, its massive contempt for both the consumer and the Congress, for the past 5 years—totaling many volumes of hearing record—if this is the best legislation your political antennae permit you to come up with, then it is respectfully suggested that some of you who are most concerned take some time out and begin to ponder, like Lucretius, on the nature of things \* \* \* relating to the corporate state of our times.

Even adopting the frame of reference of the bill's proponents—that a little is better than nothing—is this bill workable? Can a bill which tries to replace entrenched greed with more decent corporate behavior work without criminal sanctions for knowing and willful violations, without other civil sanctions initiated by government and aggrieved citizens, without explicit authorization levels to fund the programs described by the legislation? How many examples of deceptive packaging must this committee send to the Senate floor before it ceases grovelling before the Senate Committee on Appropriations with such boilerplate language as in section 503 of the bill—

Senator GRIFFIN. I wonder if I might interrupt the witness for a moment, Mr. Chairman?

Senator HART. Senator Griffin?

Senator GRIFFIN. I have listened with attention here as you have used a lot of very colorful language. I am sure it probably makes good press, Mr. Nader, and such terms as "calculated criminal fraud," "brazen corporate crime," and so on and so forth, but when you get down to the point where you are accusing this committee of "groveling before the Senate Committee on Appropriations," I rather resent that contemptuous language, and I just want to make sure that the record reflects it. This committee does not grovel. This committee in my humble opinion has done a very outstanding job regardless of what your opinions are, and while the automobile industry is by no means perfect and we have a lot of work to do, we could regulate it to death, and we are very close to doing that, in my opinion.

I think frankly that you don't need to use such language to get attention for your views. Your statements are going to be widely covered if you will stick to the facts. But that is only my advice, and if you want to use those kinds of adjectives and accuse people of such things, including the Members of Congress, I guess you can do so, but I hope and I would think it would make your testimony less effective.

Thank you, Mr. Chairman.

Mr. NADER. Senator Griffin, I am quite aware——

Senator HART. Let me just interject here.

I have steamed about what we ought to do about the Appropriations Committee, and I suppose if I were on it I would feel differently. I always think the authorization committees do probably know better what is required for a program, but when you stick the figure on, then you are told that the Appropriations Committee knows better what the total pot is.

Mr. NADER. That is my exact point.

Grovelling is defined in the dictionary as "an abject subservience." I do not believe we need——

Senator PASTORE. Would you leave the word "abject" out?

Mr. NADER. It is quite clear, Senator, if you need any more facts beyond what is permitted in the short testimony and time available, I would really refer you to Mr. Crandall and to the volumes of testimony that he and others can bring to your attention, with documented, calculated examples of gross criminal negligence at least, if not calculated fraud.

If you will let me finish the statement, I will give additional examples. But as far as the Appropriations Committee is concerned, I am asking this committee to stand up for its rights. What committee knows better after having all these hearings how much money is needed and at least to suggest with a documented case to the Appropriations Committee how much money is needed?

There is case after case after case that can be cited, and I refer to some in a moment, where the Appropriations Committee in fact takes the Senate Commerce Committee's legislative concern which passed the Congress and emasculates it totally, and one of the reasons is that it receives no clear-cut mandate or no clear-cut communication with adequate, detailed studies from the legislative committee.

I would submit that this has happened so frequently that it betrays the feeling by nonappropriation committees that this awesome Appropriations Committee cannot be advised, cannot be given in detail the facts to help it make up its mind more explicitly.

Look at the bill, "There are authorized to be appropriated to the Department of Transportation such sums as may be necessary to carry out the provisions of this act."

It gives absolutely no guidance to the appropriations committees who do not hear the facts, who do not get the feeling such as being expressed here this morning, who aren't exposed to the testimony, and who even if they had good intentions are going to give this a much lower priority than would the legislative committee.

Senator PASTORE. Mr. Nader, you are saying something that it is a little bit beyond your competence. I think you have done a marvelous job in alerting this country and this Congress to consumer rights, and many times you have been rather enthusiastic and we applaud you for

that. I think had you not come on the scene, maybe the picture would not be as healthy as it is today, as much as it might still be sick. But the fact still remains that a member of that Appropriations Committee is the chairman of this committee, Mr. Magnuson. I am also a member of that committee.

We have a tremendous amount of interest and compassion for the legislation of which you now speak. But now after all, the coffers of this country receive a number of dollars. This year we will have an actual budget that will run about \$30 billion short of the amount of money that we receive. If we appropriated all the money that is required by the Committee on Health, Education, and Welfare alone, we would have to double the taxes in this country.

Now, we have to consider everything.

The FCC comes before our committee, and they have many deficiencies there and they need more staff. The SEC comes before our committee and they have a tremendous responsibility. The Federal Power Commission—all these come before the Appropriations Committee.

Now, it is like the father of a family—I don't know if you are married and have a family—it is like the father of a family who brings a paycheck home. There are a lot of things he would like to do, a lot of things he needs to do, but he has to confine his activity within his pocketbook.

There is no deliberate intent to deny relief in this respect, but it is a question of allocating the priorities. It isn't a question of cases being presented. The case is presented, it is understood. Any Member of the Senate has the perfect right to introduce an amendment if he is dissatisfied with the amount that is recommended by the Appropriations Committee, and, then, of course, it is up for debate.

But these problems are not as simple as a question of carrying out every thought and every mandate of every legislative committee.

I don't mean to lecture here. All I am trying to tell you is you have got just as much heart on this side as there is heart on your side. You have just as much interest here. I am just as much interested in the consumer as you may be.

Mr. NADER. That is my point, Senator. My point is the Appropriations Committee needs detailed guidance from the legislative committee.

Senator PASTORE. No, we need more money, and there is only one way of getting it.

Mr. NADER. Suppose they ask how do we know how much to spend for this bill, shouldn't they have from your committee, this committee—

Senator PASTORE. It is being done, sir. They don't get everything they ask for because when you begin to cut up the pie, you have to take care of health, you have to take care of education, you have to take care of poverty, you have to take care of every other facet within our society that is crying out for help. It isn't only for the automobiles. It is everybody.

Yes, we do fall short in appropriations as against the authorizations, but it is a natural phenomenon, and there is only one way to cure it. Every mayor wants more money because he wants to get rid of the ghettos. What is more important, getting rid of the ghettos or

putting a bumper on an automobile? We have to decide that. Is it more important keeping a child in school, giving him a little education before he goes to school on the Headstart program or is it more important to put a bumper on a car?

All these things naturally have to be considered. So when you sit there and you give a general indictment that the Appropriations Committee is not listening, then I think myself you are doing a disservice to yourself, too, because that isn't the question at all.

You are privileged to come before our committee at any time you want, and if you feel that any legislative committee is derelict in presenting its case, you have a perfect right to come there. But I repeat again it is a question of allocating priorities, and we have got a big headache.

Mr. NADER. I couldn't agree more, Senator. All I am pleading for, because there has to be a contention between the dollar budgets, between the various programs, all I am pleading is that the Senate legislative committee on a bill be more specific in providing a justification for whatever level it thinks it warrants. The Appropriations Committee will undoubtedly slash it, but at least the Appropriations Committee will have something to go on.

Suppose I ask to testify before the Senate Appropriations Committee on one of your laws and urge them to appropriate a certain amount and they say to me, "We haven't heard from the Senate Commerce Committee about how much money should be appropriated in this bill." Where does that leave any citizen?

Senator PASTORE. They haven't said that.

Mr. NADER. The point is they haven't.

Senator PASTORE. No; we have witnesses coming before the Appropriations Committee. The legislative committees are being heard, and they are being heard on the floor of the Senate if we do not do the right job. I repeat again it is a question of money, and that is the eternal dilemma, more money.

Mr. NADER. Look at the utter failure of the Oil and Gas Pipeline Safety Acts and the Radiation Control Act and observe their miniscule appropriations—a caricature of recognition of your deliberations by your fellow Appropriations Committee. When is this committee going to fight for adequate funding support for its consumer protection bills by taking the first step of stating at least an explicit authorization level with backup detail?

When is this committee going to stand up to Lloyd Cutler and his industry cohorts and say that if there are criminal penalties for the poor and deprived, if there are criminal penalties for other industry and labor practices, then there must be criminal penalties for the automobile industry when its executives knowingly violate standards designed to protect citizens from injuries and systematic fraud?

For example, I think the Gas Pipeline Safety Act had an initial year's budget of something like \$250,000. This is for about 500,000 miles of gas pipeline, to set the standards and make sure they are enforced.

Let me go on to several other weaknesses in the bill which call for a complete redrafting in my opinion.

(1) Section 125(d) as written appears to ignore recent history by having the Secretary of Transportation undertake a feasibility study

relating to a crashworthiness index, and if by July 1, 1972, he finds it feasible, he is to develop and prescribe by regulations "issued as soon as may be practicable such a system of tests and testing procedures." In the first place, if the committee doesn't stipulate a date, "as soon as may be practicable" could trespass on eternity. Even when the committee stipulated a date, as for the used car standards—due by September 1968 and still not issued—in the 1966 National Traffic and Motor Vehicle Safety Act, the Department will violate its own statute. But the Congress has no control whatsoever over "agency discretion," as that term is charitably used unless there is a specific date for such regulations. Even more to the point, the Department has already recognized the feasibility of such a crash-injury rating system. Crash-injury specialists have long known such a system to be feasible.

In testimony by the Department of Transportation itself before this committee on April 14 and 15, 1969, the National Highway Safety Bureau's "Comparative Crash Survivability" program was described in some detail. (See pp. 93–100 of the hearings.)<sup>1</sup> A memorandum from the Department of Transportation stated:

Informing the consumer of the comparative crash survivability of all vehicles on the market is an indisputably important aspect of assisting him to make an informed choice in the marketplace, a provision clearly mandated in the legislative history and embodied in the substance of the law.

The Bureau accordingly has launched a program aimed at assessing the comparative crash survivability of all vehicles.

At the hearings the Department of Transportation, per Frank Turner and Robert Brenner, said the plan would be delayed by 2 months during which the Safety Bureau would obtain its own anthropometric dummies and develop a more sophisticated procedure for testing.

On June 26, 1969, Senator Hartke wrote to Frank Turner, Administrator of the Federal Highway Administration—at that time the overlord of the highway safety and motor vehicle safety programs—to request a status report on the comparative crash survivability program and particularly the projected date for completion of the crash survivability index. Some 5 months later, on November 18, 1969, Mr. Turner responded to Senator Hartke.

I would like to submit that letter for the record.

Senator HART. It will be received.

(The letters follow:)

U.S. DEPARTMENT OF TRANSPORTATION,  
FEDERAL HIGHWAY ADMINISTRATION,  
*Washington, D.C., November 18, 1969.*

HON. VANCE HARTKE,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR HARTKE: I am writing in response to your inquiry about the resumption of vehicle to vehicle crash testing and the current status of the Department's Comparative Crash Survivability (CCS) Program.

In answer to the specific questions you raised, we have completed the initial program planning work for the projected six-year program and the following is in progress:

1. Within 30 months we should be able to publish quantitative ratings of the survivability characteristics of vehicles by weight class based on analysis of accident data with limited crash testing.

<sup>1</sup> See Senate Commerce Committee hearings record, Serial No. 91–17.

2. At the end of FY 1975, we will be able to augment the first vehicle rating schedules by rank ordering the automobile population by make and model according to quantitative measures of their overall crash survivability characteristics. This will be based on not only statistical but also on significant crash testing experience.

3. We have arranged to resume vehicle to vehicle crash testing in December 1969. In addition, make and model measurements will be obtained from crash tests conducted for other Safety Bureau purposes.

4. We have procured anthropometric test dummies suitable for dynamic testing. Delivery of the last of the three test dummies on order in April was taken July 18, 1969.

As I have mentioned previously, carefully selected and controlled crash tests will provide useful inputs to the development of a meaningful comparative crash survivability index. However, to obtain a meaningful comparative crash survivability index it is essential that we do much more than just crash test automobiles. Such data alone cannot provide all of the information which will be needed. For this reason we will be combining and integrating the crash test information with the following:

1. Analysis of mass accident data.

2. Mathematical modeling and computer simulation techniques.

3. Utilization of multidisciplinary in-depth accident investigation team reports.

In order to get the maximum benefit from the various vehicle crash tests conducted by the Safety Bureau, each test will be programmed to obtain as much data as possible. At the present time it is our intention to conduct crash tests in fiscal year 1970 to obtain performance data on passive occupant restraint systems, integrated seats, and energy absorbing bumpers, and we will, as in the past, conduct compliance crash tests for those motor vehicle safety standards which require them. On each of these various tests we will be piggybacking requirements for the other program areas for maximum utilization of this activity.

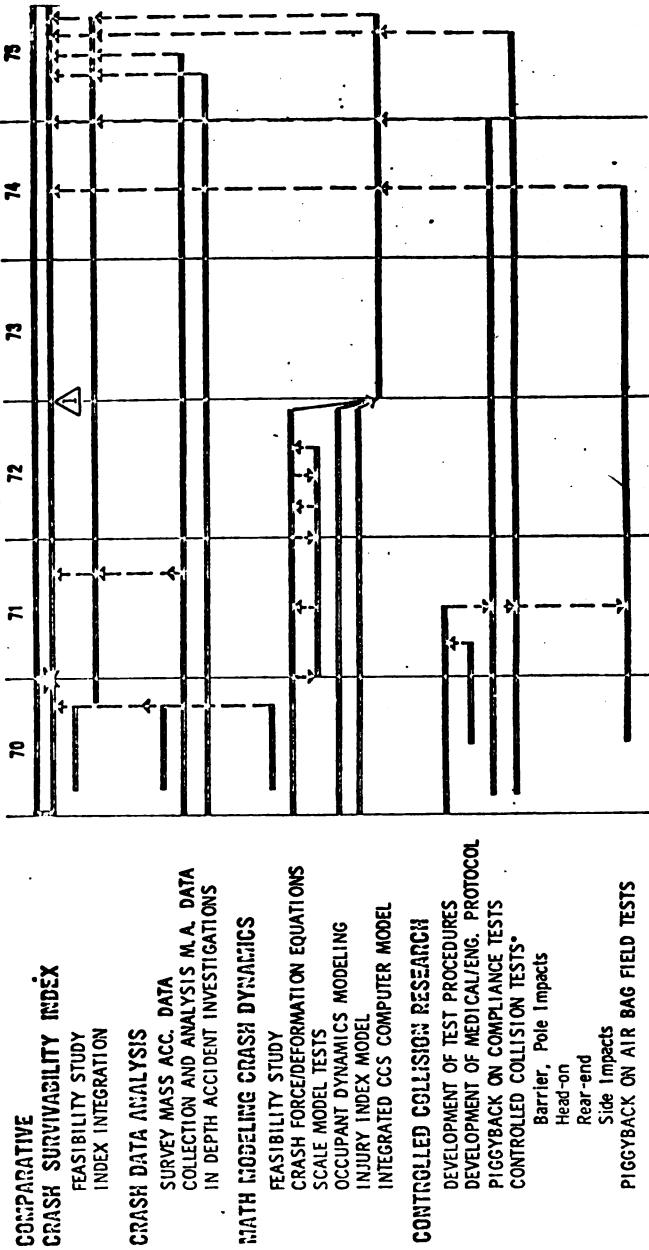
However, I would like to stress that we are broaching the state-of-the-art in the CCS Program; heretofore, no one has ever attempted to obtain a quantitative measure of a whole vehicle's crash survivability characteristics. Thus, the program plan represents our best estimate of how and when we may develop a meaningful comparative crash survivability index. While we are very optimistic over what can be done, our rate of progress will depend on the resources made available for this job.

I trust that this information is responsive to your request. If you would like additional information I will be happy to supply it.

Sincerely,

FRANK C. TURNER.

# COMPARATIVE CRASH SURVIVABILITY PROGRAM SCHEDULE



\*With Medical/Engineering Team Evaluations and Recommendations

\*Program Direction Decision

△ Comparative Crash Survivability Ratings by Vehicle Weight Cla  
△ Comparative Crash Survivability Ratings by Make & Model.

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
Washington, D.C., June 26, 1969.

FRANCIS C. TURNER,  
Administrator, Federal Highway Administration, Department of Transportation,  
Washington, D.C.

DEAR MR. TURNER: As you may recall, at our recent hearings to review the implementation of the National Traffic and Motor Vehicle Safety Act, we discussed in some detail the Highway Safety Bureau's program to crash test various motor vehicles in order to develop a comparative crash survivability index, by make and model, of all automobiles sold in the United States. At that time you indicated to me that the Bureau's crash testing would be delayed for approximately two months while the Bureau obtained its own anthropometric dummies and developed a more sophisticated procedure for the testing of these cars. You indicated that the dummies would be available in approximately 60 to 90 days and that testing would then resume almost immediately.

Since two months have now passed since you described these plans to the Committee, I appreciate receiving some information on the current status of the crash survivability program. Has the Department yet obtained the necessary test dummies? If so, when were these dummies received, and if not, when do you expect them to arrive? Has the Department completed the formulation of its new test procedure which you indicated would speed up the testing of various motor vehicles and accelerate the accumulation of meaningful data which could be made available to consumers? If so, would you please send me an outline of the proposed test program, and if not, could you explain when such a program will be available? Finally, can you indicate the projected date when the Department initially expects to have available a complete crash survivability index?

I believe that it is extremely important for information about the comparative safety of various types of motor vehicles to be made available to all consumers who are considering purchasing a new car. The Department's crash survivability program will be essential in developing this information in a form which will be intelligible to prospective car buyers, so I hope that your commitment to this project is as great as you indicated when you testified before the Committee on April 14th.

Sincerely,

VANCE HARTKE, *U.S. Senator.*

NATIONAL HIGHWAY SAFETY BUREAU, FEDERAL HIGHWAY ADMINISTRATION,  
U.S. DEPARTMENT OF TRANSPORTATION

COMPARATIVE CRASH SURVIVABILITY OF MOTOR VEHICLES

ABSTRACT

This report describes a program of the National Highway Safety Bureau to assess the comparative crash survivability of motor vehicles and to inform the public accordingly.

*Part I.*—Describes the concept of comparative crash survivability, the method and scope of the Bureau's program in this area.

*Part II.*—Describes the proposed general program.

*Part III.*—Describes in brief the preliminary phase of the program dealing with tests on the SUBARU, KING MIDGET and VW vehicles.

*Part IV.*—Presents the overall program schedule and funding requirements.

PART I.—INTRODUCTION

1. Background

The overriding purpose of a motor vehicle and highway safety program is to reduce the number of traffic deaths and injuries. This can be accomplished by either: (a) reducing the likelihood that crashes take place, (b) increasing the survivability of crashes that do occur, (c) increasing the chances of ultimate full recovery of victims from injuries they suffer in crashes.

This report deals solely with the crash survivability aspects of this comprehensive approach, more specifically, with a program for determining the crash survivability inherent in the design and construction of the vehicle itself. It is

important to bear in mind that the concept of rating vehicles according to some measure of their overall crash survivability is new. The development of a meaningful crash survivability rating system will be a difficult, complex undertaking, requiring a considerable investment in manpower, funds and time.

The historical antecedent of this program is in research started in the late 1930's due to DeHaven,<sup>1</sup> which established that many motor vehicle crashes would be survivable—even at high impact speeds. This has now been amply demonstrated in operating experience and in widespread reports on the effectiveness in crashes of seat and shoulder belts, of the energy-absorbing steering assembly, and of the HPR (high penetration resistant) windshield. All of these items are now Federal requirements. (See Figures 1, 2, and 3.) A number of other crash survivability aspects of the vehicle are covered in Federal standards now in effect or in rulemaking actions which are now in progress. Thus, vehicle design for crash survivability has become a very important dimension of automotive engineering practice.

## 2. Comparative crash survivability

The Federal motor vehicle safety standards for crash injury reduction and post-crash protection have been established for vehicle performance under standardized test conditions that produce comparable impact forces to those produced in actual crashes on the relevant vehicle components, such as the loads produced on the driver's chest by striking the steering wheel, or the front passenger's head striking the windshield or instrument panel. The consumer can thus be assured of the survivability of the degree that crash survivability is embodied in the standards in effect for the vehicle in which he is riding.

However, he also must know something about the crash survivability of the complete vehicle. Although he knows that all new vehicles (aside from the exempted classes) must meet minimum safety performance standards he does not know how much additional safety he is buying in larger and presumably higher priced vehicles, or, conversely, how much additional hazard, if any, he is incurring in purchasing smaller vehicles. Informing the consumer of the comparative crash survivability of all vehicles on the market is an indisputably important aspect of assisting him to make an informed choice in the marketplace, a provision clearly mandated in the legislative history and embodied in the substance of the law.

The Bureau accordingly has launched a program aimed at assessing the comparative crash survivability of all vehicles. The program has been started with the small cars which are exempt from the existing Federal crash survivability standards and hence which do not provide even this degree of assurance to the consumer. The fact that this program of vital interest to consumers has been started with small cars can readily lead to the erroneous conclusion that the intent of the Bureau is somehow to rule small cars off the road. *This is not a Bureau goal*, although elementary physics amply demonstrates that the smaller car can never have the equivalent crash survivability of the larger car, all other factors being the same. *Instead the goal is to inform the consumer on comparative or incremental crash survivability with size and price among all vehicle types*, starting with those as yet exempt from Federal safety standards and posing the greatest risk, and continuing with those that already are under Federal safety regulations.

## 3. Methods

The methods being followed in the Comparative Crash Survivability Program are largely those developed and perfected by Mathewson and Severy, et al.<sup>2</sup> Instrumented vehicles are caused to crash into each other. Engineers assess the resulting frame and body damage to the vehicle; physicians deduce crash survivability from impact force measurements and visual examination of damage to anthropometric dummies in the crashing vehicles.

A major effort will be made to develop mathematical models that will enable one to simulate crashes. However, the present state of the art in mathematical modeling of crash dynamics demands that a study be initiated to determine the practical feasibility of this approach. Once the analytical methods have been developed and verified, computer "crashes" will be substituted for actual crashes to the maximum extent possible.

<sup>1</sup> Dellahaven, Hugh. "Mechanical Analysis of Survival in Falls from Heights of 50 to 150 Feet," War Medicine, 2: 586 July 1942.

<sup>2</sup> Mathewson, J. H. and Severy, D. M., "Automobile Barrier Impacts," Highway Research Board, National Academy of Sciences, Washington, D.C., Bulletin 91, Jan. 1954.

#### 4. *Scope*

The program ultimately is to cover all sizes and types of vehicles, angles of impact, rollovers and other crash conditions.

Because of resource limitations it will not be possible to crash test all make-model combinations, thus the order of tests will be set largely by the comparative frequency of death and injury totals associated with different classes of vehicles. The vehicles with the greatest involvement of crash death and injury totals will come first.

#### 5. *Correlated Programs*

Results of the comparative crash survivability program will be examined for possible correlations with data now being collected by the Bureau of nationwide crash death and injury totals by vehicle make and model, with the medical-engineering research investigations of accidents now being conducted under NHTSB sponsorship by seven different universities, and ultimately in relation to a new program shortly to be started on vehicle frame deformation under crash impacts.

### PART II.—THE GENERAL PROGRAM

The purpose of the Comparative Crash Survivability program is to develop the scientifically reproducible methodology that will enable the NHTSB to rank order motor vehicles in terms of their comparative crash survivability characteristics. The methodology consists of utilizing the results of statistical studies of vehicle accident experience by make-model and integrating it with data from controlled collision research, vehicle frame deformation analysis and in-depth accident investigations by medical/engineering teams, to arrive at a vehicle crash survivability rating.

#### 1. *Vehicle Crash Survivability Rating*

The Federal standards provide quantitative criteria for important separate properties of a vehicle that bear on its crash survivability. For example, Standard Nos. 203 and 204 identify the required performance values for the energy-absorbing steering shaft; Standard Nos. 208 and 209 cover the performance of safety belts, etc. However, there is no standard that covers crash survivability of the vehicle. Furthermore, even if a standard were to be issued for such an all-inclusive property as "crash survivability," it would be a minimum standard that, while giving the consumer at least this degree of assurance, would not aid him in selection among alternative competing models—all of which would have to meet the minimum standard.

The purpose of the projected vehicle crash survivability rating is to establish a means for evaluating the crash survivability of a vehicle and, in some manner, rank ordering its performance in this respect with that of other vehicles. By referring to the rating scheme the consumer could become informed of how much additional "crash survivability" (if any) he would receive by purchasing one vehicle instead of another, for example, a large vehicle instead of a "mini-car."

At the present time, there is no generally accepted analytical or other scheme for rating the crash survivability of a vehicle, although at least two groups of investigators have developed their own schemes.<sup>3</sup> Two methods are now under study for development by the Bureau. In the first method, crash survivability ratings would be derived from detailed statistical analysis of State accident data on a vehicle make-model basis. The second method involves more extensive research and centers on utilizing the techniques of medical-engineering investigations of crashes, vehicle frame deformation analysis, and controlled research collisions to arrive at comparative ratings.

The statistical and medical-engineering methods of arriving at comparative vehicle ratings should, in principle at least, converge on the same results. However, it appears that the statistical approach can produce results sooner than the medical-engineering method. On the other hand, the medical-engineering work should ultimately produce more reliable ratings along with substantially broader and deeper understanding of the problem. Accordingly, both methods should be pursued in parallel, with the results produced by each being reconciled with the other as they progress.

<sup>3</sup> Dr. Nahum, UCLA and Cornell Aeronautical Laboratories.

An illustration, a straightforward system of A, B, C, and D ratings might be developed, with the criteria being as simple as follows:

**Vehicle crash  
survivability  
rating**

**Criteria**

A-----	Greater than 90 percent chance of surviving a crash.
B-----	75 percent to 90 percent chance of surviving a crash.
C-----	50 percent to 75 percent chance of surviving a crash.
D-----	Less than 50 percent chance of surviving a crash.

Since crash survivability is dependent upon impact speed (and, of course, whether the occupant was wearing a proper safety belt at the instant of impact) the survivability rating undoubtedly would change over the range of impact speeds. For example, a vehicle with excellent survivability in a low speed crash would be expected to have decreasing survivability in crashes at higher speeds up to speeds at which no impact is survivable.

In this type of a crash survivability rating scheme, the data derived from extensive computer analysis, laboratory tests, field tests, and correlation with medical-engineering investigations of accidents could be organized in easy to understand tables such as Table 1. In this example, vehicle #1 has comparatively excellent crash survivability at impact speeds below 40 mph, good survivability in 40-50 mph ranges, and adequate rating between 50-60 mph, and a poor rating at greater than 60 mph impacts. In contrast, vehicle #4 has an adequate rating only for impacts under 20 mph. At greater speeds, its survivability is poor.

## 2. Statistical Rating of Vehicle Crash Experience

About 14 million injury-producing vehicle accidents occur each year in the United States. These accidents can be classified according to the involvement of vehicles of different make-model-year combinations. When the accident data are thus classified and related to the numbers of registered vehicles in the comparable classifications, it becomes possible to derive a comparison of vehicle accident rates. This approach has a number of broad-gauged benefits, and is being implemented by the Bureau by helping states to upgrade their data systems under the provisions of the Highway Safety Act.

However, the approach has several inherent limitations which preclude other than very broad interpretations. For example, if the data indicate that one particular type of vehicle is involved in a disproportionately high number of fatal crashes, it usually cannot be determined except with more detailed statistical analysis whether this is related to the vehicle, the class of drivers that use that class of vehicles, or some combination.

An even greater degree of complexity in interpretation relates to the nature of the driving exposure of the high-accident vehicles in comparison to that of the others. Clearly, if vehicles are used under inherently dangerous conditions, more accidents would be expected.

## 3. Medical-Engineering analysis of vehicle crash survivability

The medical-engineering method of assessing the comparative crash survivability of vehicles is comprised of several major subprograms each of which has its own unique purposes in addition to sharing the common purpose related to crash survivability: (a) Vehicle Frame Deformation Analysis, (b) Medical-Engineering Accident Investigations, and (c) Controlled Research Collisions.

TABLE 1.—POSSIBLE SCHEME FOR RATING VEHICLE COMPARATIVE CRASH SURVIVABILITY

[Crash survivability rates: A—90 percent chance of survivability; B—75 to 90 percent; C—50 to 75 percent; D—less than 50 percent chance of survivability.]

	Speed at impact—					
	Under 20 miles per hour	20 to 30 miles per hour	30 to 40 miles per hour	40 to 50 miles per hour	50 to 60 miles per hour	Above 60 miles per hour
Vehicle Number 1.....	A	A	A	B	C	D
Vehicle Number 2.....	A	A	B	C	C	D
Vehicle Number 3.....	B	B	C	C	D	D
Vehicle Number 4.....	C	D	D	D	D	D

One of the basic requirements for the success of the comparative crash survivability rating system is to be able to correlate the personal injury aftermath of the actual highway crash (in which the actual crash forces and impact speeds are not known with any degree of reliability) to the highly precise information obtained in the controlled research collision.

For the medical-engineering analysis of vehicle crash survivability, the Bureau would rely substantially on the judgment of its medical-engineering teams from universities throughout the country, similarly qualified experts from industry, and its own in-house staff. These and other participating scientists would be invited to witness controlled collisions to evaluate the vehicle wreckage and accelerometer readings on impact loadings to dummies riding in the crashes, and then to correlate these impressions with their field experience in studying actual accidents or performing autopsies and clinical follow-ups on human victims of the crashes. They would already be familiar with the human tolerance to impact forces, and, in essence, would be relating this knowledge to their impression of the wreckage.

By comparing the independent judgments of several scientists, it is anticipated that a valid assessment of a vehicle's crash survivability under controlled test conditions can be made. Medical-engineering assessments alone will not yield a meaningful comparative rating because resources will not permit destructive testing of all make-model combinations.

A valid comparative crash survivability rating system will ultimately depend upon development of mathematical techniques that will allow computer "crash" simulations. The development of the necessary mathematical modeling techniques will be discussed in the next section on vehicle frame deformation analysis.

#### *a. Vehicle Frame Deformation Analysis*

A vehicle in a crash is subjected to the impact forces which produce the deaths and disabling injuries to occupants. It is highly important to know the impact vectors (defined as the direction and magnitude of these impact forces) to identify how the vehicle frame and body structure, as well as such interior features as safety belts, could have improved its crash survivability properties. This impact information is vital to learning how best to improve the crash survivability of the vehicle.

In addition to causing disabling and fatal injuries to occupants, the impact forces can produce substantial deformation of the frame and body structures of the vehicle. These deformations remain after impact, and if later measured, can, in principle at least, provide important clues as to the impact forces that produced them. At least one major manufacturer of automobile frames has indicated that by measuring frame deformations, it may be possible to reliably estimate the crash forces that produced the deformations. The Bureau proposes to encourage, and perhaps sponsor, systematic evaluation of these methods.

An even more fundamental aspect of this approach is to develop mathematical equations that describe the manner in which crash impacts produce vehicle frame deformations. If such equations can be developed, it should be comparatively straightforward to program modern high-speed computers to simulate a crash and determine the probable crash survivability properties of given vehicle frame design. This methodology is analogous to that which has been highly successful in aerospace applications, but which as yet have not been utilized to any substantive degree in the motor vehicle area.

The computer simulation of vehicle frame deformation produced by crash impact forces would permit much of the analysis of crash survivability properties of a vehicle frame to be accomplished without resorting to expensive and time-consuming destructive tests of full-scale vehicles. Furthermore, it would allow for scale model testing, obviously at much lower cost than by testing of full-size prototypes. It should be noted here that by the time a full-size prototype is available, the design investment is so great that any substantial change would be effected only at very high costs. This is another important benefit that will result from the development of the output of properly validated analytical methods. Finally, these methods will make it possible to eliminate much of the expensive and time-consuming destructive test methods now required to ascertain compliance with applicable Federal standards.

The essence of the vehicle frame deformation program is directed toward developing the capability of mathematically deducing impact forces from precise measurement of deformations that produced them. The program is comprised of a complete cycle of activities, the major steps in the cycle being:

*Step 1:* Develop mathematical equation of frame deformation under impact.

*Step 2:* Apply the equations to scale models of vehicles.

*Step 3:* Subject the scale models to impact forces, and analyze the resulting data with computers.

*Step 4:* Apply the equations to controlled impacts with full-size prototype models, and analyze the resulting data on computers.

*Step 5:* Modify the equations if the analytical do not coincide with the force and deformation measurements, and repeat the process.

#### **b. Medical-Engineering Accident Investigations**

The output of the vehicle frame deformation program will be the capability to correlate vehicle frame deformation and impact forces. In a parallel program of the Bureau comprised of medical-engineering investigations of accidents, correlations of occupant injuries to vehicle deformations are being sought. By combining these correlations it will be possible to relate occupant injuries to impact forces.

In the accident investigation program, research teams consisting of engineers and doctors are conducting in-depth investigations of crashes throughout the country. The teams conduct detailed investigations at the scene of a crash. In the detailed follow-up physicians conduct either autopsies of the fatally injured or extensive clinical studies of the hospitalized; the engineers perform engineering analyses of the damaged vehicle. The independently generated sets of injury and vehicle damage data are jointly analyzed to establish correlations between vehicle design features and injury patterns.

Medical-engineering teams from seven universities throughout the country are now participating in the program (Appendix 1). Additional universities have indicated interest in joining the program and plans have been completed to expand the program to a total of 17 teams in FY 1970.

The importance of the Bureau's research effort in crash trauma has been widely recognized. Thus, the American Medical Association has recently announced an independent \$50,000 grant to the Bureau's primary contractor, the UCLA Trauma Research Group, to train 50 two-man teams (one from each state) in crash trauma techniques. Each team will be comprised of a physician and a high-ranking police officer responsible for accident investigation. In excess of 400 physicians have expressed interest in joining the program, which is to start in late Spring of this year.

The experience and the expertise of the medical-engineering accident investigation teams will be utilized to interpret the results observed in the controlled collision tests in terms of the probable injury patterns human occupants would experience in similar crash conditions. In brief, a medical-engineering team would observe each controlled collision test, conduct a post crash examination of the vehicle and the anthropometric dummy, view the high speed photography of the motion of the dummy, analyze the force data and evaluate the results in terms of possible human trauma.

A more detailed description of the role of the medical-engineering team in the comparative crash survivability program is given in the next section, (c) Controlled Research Collisions.

#### **c. Controlled Research Collisions**

The medical-engineering teams are able to assess crash aftermaths such as the damage to vital organs of the occupants. They also can judge with some precision the part of the vehicle interior that caused the injuries. However, they can only speculate on the crash impact forces that produced the damage. The ultimate full understanding of the mode in which alternative vehicle structural and design configurations affect its crash survivability depends directly on the capability to measure these impact forces and relate them to the concomitant damage they produce to the vital organs of the occupants.

Controlled collisions under carefully defined conditions of impact are the principal means of accomplishing the cross-linking of the impact forces to vehicle damage to the trauma production in occupants. Live human subjects cannot, of course, be used in these tests. Instead, anthropometric dummies ride in the vehicles. Accelerometer and other force-measuring instruments are installed in various locations in the dummy comparable to where vital organs would be located in humans. The instruments record the forces sustained by the dummy, while high speed color photography records the movements of the anthropometric dummies. The records are interpreted by pathologists and other medical scientists as to the likelihood that similar forces would produce comparable damage to humans.

The use of anthropometric dummies and other devices to simulate human response to forces is comparatively new and far from an exact science as yet. However, even in its present state of development, it is providing the major foundation of all of the Federal standards relating to the crash survivability of vehicles. For example, Federal Standard 201 on occupant protection in interior impact, calls out a performance standard that a sphered form (as an analogue of the human head) shall not under specified impact conditions sustain a deceleration in excess of 80g continuously for more than 3 milliseconds when it strikes the vehicle's instrument panel.

The controlled collision is the only method whereby a vehicle can be crashed under pre-determined conditions that are capable of being measured and correlated with the resulting damage to the vehicle and to the force impacted at the vital organ location points within the anthropometric dummies. By systematically varying the pre-set impact conditions, the comparative crash survivability effectiveness of alternative vehicle frame and body configuring can be assessed. It is mandatory that this assessment not be limited to the frame deformation analysis, but instead include correlations with the forces produced in the vital organ locations in the dummies.

Stated otherwise, within the present state of the art, there is no proven way other than controlled collision methods, of correlating the design characteristics of the vehicle frame and body (as a total packaging system of humans) with the forces sustained by the occupants in a crash.

By the same token, forces produced upon anthropometric dummies in the controlled collisions are only indicators of the degree of damage to human tissue that such forces would produce. Apart from controlled impact studies with primates, there is no way of determining the nature and extent of damage that these impact forces will cause in living human tissue and bones. There is no way, that is, except by on the spot analysis of accident victims followed by autopsies of the fatally injured or, if the victim survives, by extended clinical surveillance. This is, of course, a primary purpose of the Bureau's medical-engineering investigation of accidents.

The medical-engineering investigations, however, do not know precisely the impact forces that produced the human tissue damage that they observe in the crash aftermath. The vehicle frame and body deformation measurements can provide the most important evidence in this respect, particularly if the observed damage to the vehicle can be rated or otherwise compared with the vehicle damage observed in the controlled collisions for which the precise conditions of impact are known.

Imperative to the evaluation of each controlled collision test is the integration of results into the overall crash survivability program. The visible crash result of one car, when compared with another subjected to an identical test, provides only a very gross indication of relative survivability. Indeed, any conclusions drawn from merely viewing the crash event may be completely erroneous. Complete evaluation of the recorded data together with detailed film analysis and careful measurement of structural deformation must be performed. Medical/engineering field personnel will be key participants in this evaluation. They will be called upon to assess the probable injury level to occupants by evaluating the acceleration, time exposure of the dummy, the relative motion of the dummy and any dummy contact with structure, physical damage to the dummy, and passenger compartment integrity. Injury level predictions will be referenced to the field experience of investigations of actual highway accident crashes. Frame deformation and structural damage will be carefully analyzed, used as a comparative element with on-the-road crashes, and provided as an input to frame deformation math models for verification of the analytical work.

Through the medium of frame and structural deformation and medical/engineering team experience, injury severity predictions will be progressively refined. Injury indices will then be provided to the analytical model, leading to the capability of predicting (based on non-destructive "computer crashes") the probable injury severity of occupants in any car, given the knowledge of its basic frame and structural design and the crash mode.

Thus, the three elements of vehicle frame deformation and analysis, medical-engineering investigation of accidents, and the controlled research collision comprise an extremely powerful group of programs that together can lead to vehicle crash survivability ratings that are reliable and reflect actual loss inherent in highway crashes.

Appendix II contains a detailed controlled collision plan.

## PART III.—SUBARU AND KING MIDGET TESTS

During the preliminary phase of the comparative crash survivability program intervehicular collision procedures were developed and tested and the first controlled vehicle to vehicle collision tests were completed. Selected for the first tests were two "mini-car" class vehicles—the Subaru 360, a Japanese import and a King Midget, manufactured in Athens, Ohio. Cars from the mini-class of vehicles were selected for the first tests because of the inherently high degree of risk of serious injury or death occupants would be subjected to in the event of a crash, by virtue of their extremely small size.

### 1. "Mini-car" Definition

For purposes of this report a "mini-car" is defined as 3- or 4-wheeled vehicles designed as a passenger vehicle for use on public highways and weighing less than 1,000 pounds.

### 2. Exemptions from Federal Standards

With two major types of exceptions, all vehicles manufactured on or after the date of effectiveness of the Federal safety performance standards must comply with the standards. The first class of exempted vehicles is the so-called "mini-cars," that is, passenger cars under 1,000 pounds in weight as defined above. The exemption was granted because at the time the standards were issued, there was no apparent way to write a standard calling for a reasonable level of safety performance which would not immediately rule all mini-cars off of public thoroughfares. Inasmuch as comparatively few mini-cars were in use then, it was decided that they could be exempted as a class from the standards pending more thorough analysis of alternatives.

### 3. Mini-Car Crash Survivability Tests

As long as comparatively small numbers of mini-cars or antique (or other) small volume vehicles were in use on the country's public thoroughfares, low priority was assigned to the engineering work that had to precede lifting exemptions and bringing these classes of vehicles under appropriate Federal safety regulations. With increasing reports in the trade journals of an impending influx of mini-cars into the United States market (since confirmed by a major new advertising campaign on Subaru in California), the Bureau initiated an immediate analysis of mini-car safety.

The first phase of this program called for an engineering examination of the Subaru and a domestically produced mini-car of approximately the same weight, the King Midget. The principal purpose was to determine if either of these two vehicles could meet Federal standards if the exemption were to be removed. The results, tabulated in Appendix 1, were negative, that is, neither could meet all of the Federal standards without what would appear to be major changes.

Another purpose of the tests was to obtain a qualitative indication of the comparative crash survivability of each of these vehicles. In this regard, both demonstrated poor crash survivability in 30 mph head-on impacts with standard size cars.

### 4. Council Recommendation

Results of the Subaru and King Midget tests, including high speed films of the crash impact, were presented to the National Motor Vehicle Safety Advisory Council on February 14, 1969. The Council then adopted the following resolution: "That 3- or 4-wheeled vehicles designed as passenger vehicles for use on public highways be required to comply with Federal standards regulating safety of such vehicles, even if their weight does not exceed 1,000 pounds."

### 5. National Policy

The high hazard inherent in the mini-cars tested is unmistakably clear from the test results, as reflected in the Council resolution. The severe hazard, however, cannot be the sole consideration in arriving at national policy; a number of other factors must also be examined.

There is considerable doubt that this class of vehicle could be made to conform with present or projected Federal standards. But even if this proves to be possible from an engineering standpoint, it likely would be accomplished only by adding additional weight and cost which would largely compromise the basic purpose of this type of vehicle—namely cheap transportation.

Another question that comes up is the safety of the mini-car compared to that of a motorcycle. A similar question relates to the comparative hazard in a "standard" passenger car striking a heavy truck.

Still another issue relates to the types of roadways on which admittedly dangerous mini-cars could be operated in comparative safety.

Since many states already prohibit 2-wheeled vehicles (i.e., motorcycles and scooters) from high speed expressways and freeways, this, in turn, suggests the alternative of limiting the mini-car operation to comparatively low hazard low speed local neighborhood streets.

These and other issues must be considered in arriving at national policy on mini-cars. Clearly there will have to be some trade-off between safety and cost. The test results to date suggest that the two vehicles tested present more than a tolerable level of hazard, and although the degree of safety that can be incorporated in a mini-car while keeping the weight and cost down is as yet unknown, it does seem possible to achieve a higher level of mini-car crash survivability than that demonstrated in the tests thus far.

#### VOLKSWAGEN TEST

The results of the Subaru and King Midget tests demonstrated the need for intervehicular crash testing and vividly pointed out the potentially serious safety problems small cars present by virtue of their size alone. This led to the decision to move up into the next weight class (1,000-2,000 lbs.), which is representative of a much larger segment of the automobile population, and the selection of a 1969 VW "Beetle" for the next test.

The VW was selected because there are more VW's in that weight class than any other single vehicle and because there is statistical data which suggests that occupants of VW suffer a disproportionately higher rate of serious injury and fatalities.

A 1969 VW-1500 was crashed head-on with a 1957 Ford. Each vehicle was travelling at 29.3 mph at the moment of impact. Accelerometers were mounted on the frames of both vehicles and each contained an anthropometric dummy restrained by an upper torso and lap belt.

The dummies were similarly instrumented, with each containing triaxial chest accelerometers and longitudinal accelerometer in the head cavity. In addition, high speed (1000 frames/sec.) color photography was obtained.

Both seat back locks failed in the 1969 VW. The restraint belt on the dummy in the 1969 VW failed where the belt goes through a center anchorage point. As a result of these failures, the chest of the dummy in the '69 VW smashed into the dashboard and the head went through the windshield opening and banged on the hood of the VW. Analysis of the high speed photography and the accelerometer data indicate it is doubtful that a human could have survived that particular crash.

In summary, the few tests that have been completed to date have produced a great deal of extremely useful information. The mini-car tests dramatically demonstrated the need for all cars licensed to be on the highways to meet the Federal safety standards. They also clearly pointed out the inherently greater safety problems associated with their exceptionally small size. The VW test, although far from being conclusive, did show up the failure of the front seat back locks and a seat belt that may indicate possible safety defects and has caused us to reexamine the adequacy of our safety standards in this area. However, the major conclusion to be drawn from the tests to date is that this type of testing has potentially very high payoff and must be continued.

#### IMPLEMENTATION

Inasmuch as the foregoing concepts deal with new and complex problems, detailed plans for implementation are now in the process of being developed.

Mr. NADER. He said that the Bureau had completed initial program planning work for the projected 6-year program; that within 30 months—that would be May 1972—the Bureau should be able to publish quantitative ratings of the survivability characteristics of vehicles by weight class based on analysis of accident data with limited crash testing; that at the end of fiscal year 1975, the Bureau will be able to augment the first vehicle rating schedules by rank ordering the auto-

mobile population by make and model according to quantitative measures of their overall crash survivability characteristics, based on not only statistical but also on significant crash testing experience; and that vehicle to vehicle crash testing would resume in December 1969 and make and model measurements will be obtained from crash tests conducted for other Safety Bureau purposes. This program has never been carried out, having been pigeonholed by the Office of Management and Budget with the full sympathy of Mr. Frank Turner and Mr. John Edwards who has been acting chief of the Safety Administration research program since January 1970, in his capacity of grounding the program.

Against this background, S. 976 reads as if what the Department of Transportation needs is another round of discretionary authority—to find feasibility or not—and another round of “as soon as may be practicable.” The Department admitted 2 years ago that such an undertaking was clearly mandated in the 1966 act. Stronger imprints of the committee on the Department’s consciousness are needed. You can start by asking the Department when it testifies here on Thursday about the current status of these promises to Senator Hartke and watch another outpouring of bureaucratese. Ask them for the results of the testing since 1969 when they testify before this proceeding.

2. Section 125(a) of the bill mandates regulations on tests and procedures for comparison of susceptibility to damage of passenger vehicles involved in crashes by July 1, 1972. The bill should require that these tests emphasize energy absorbing qualities in vehicles crashed at low speeds—so that the vehicles don’t trade off safety for property protection. Both qualities can be achieved by liberated engineering talent.

3. The bill’s bumper standard provision is now virtually obsolete, because of the Department of Transportation’s regulations. Two States have already passed more stringent legislation than DOT’s regulations—Maryland and Florida—and other States have legislation pending at comparable levels of stringency. S. 976 should require a no-damage standard for 10 miles per hour for 1975 vehicles and eliminate the loophole contained in the phrase “a minimum prescribed amount of damage as may be determined by the Secretary.” Here is an area where, if any minimum level is to be given, it should be contained in the legislation.

The committee should make it clear that such components as the following be covered by any regulation: Steering, frame, power train, suspension systems; braking systems; electrical systems, battery and battery mounts, tires, wheels, windshields, windshield wipers, side and rear windows, hood, trunk and door latches, fuel systems, cooling systems and sealing devices, exhaust systems and turning radius.

4. More important to safety than property loss reduction is protection of pedestrians by proper exterior design of vehicles. On December 28, 1967, the Department of Transportation published a proposed standard (covering only ornamental protrusions) for pedestrian protection which has never been issued as a final standard.

In response to the proposal, after complaining that it was premature and not written in objective terminology, the collusive Automobile Manufacturers Association urged that the Highway Safety Administrator, then Dr. William Haddon, issue advisory letters to

vehicle manufacturers because "such advisories would have a beneficial effect upon safety performance and help to advance the development of meaningful standards. Use of such an advisory standard would help in giving manufacturers advance notice of the Administrator's goals and reasonable leadtime where these and technical considerations preclude making a standard effective in as little time as 1 year. By judicious use of advisory letters in a case like this one—where no test procedures, performance criteria, or injury tolerances are available—the Bureau and the automobile manufacturers could pursue their common goal of greater motor vehicle safety free from the difficult legal obstacles that arise where statutory penalties may be involved."

So said the Automobile Manufacturers Association. Tell the AMA's belief that no injury tolerances or test procedures are available to the thousands of pedestrians, many of them children, who have been impaled on a hood ornament or a leering, sharp fin structure, or other sharp edges on the car.

Tell the little girl's parents, in a Washington suburb, who saw their child impaled on a Cadillac tail fin and die about 8 years ago, that there are no available injury tolerances or the little black child in Chicago similarly impaled on a vehicle ornament or the tens of thousands of pedestrians whose injuries are cruelly aggravated by an industry still waiting for "proper test procedures." They could have listened to the Greek physician, Hippocrates, who over 2000 years ago stated the verity that the human body is more able to tolerate safely colliding against a flat surface than a sharp, cutting edge. Some 500,000 pedestrians are injured every year in contact with motor vehicles; about 10,000 are fatally injured; most survive, but their injuries are worsened by this stylistic pornography of the auto companies—witness the bristling front ends of many contemporary or new models.

Almost simultaneous with the submission of these comments, Dr. William Haddon wrote a letter alerting manufacturers to the dangers of exterior vehicle protection, dated December 21, 1967 (p. 368 of the April 25, 1968, hearings before the Senate Commerce Committee).<sup>2</sup> So there was the advisory solicited by the AMA. General Motors in its comments to this docket stated:

It is estimated that a minimum time of one year will be required to complete the necessary studies and to correlate these data with actual accident information. In the meantime, we are using our best judgment in elimination of projections such as hood and fender ornaments and winged projections on wheel covers and similar items until meaningful standards can be developed.

And they did improve some of these things in subsequent years.

Typically, GM displayed its intent on its cars, not its words. Here for the records are recent advertisements by GM actually touting the return of hood ornaments for some of their 1971 models—ornaments which for their bendability still pose a rigid hazard on downward impact as pedestrian-car impact studies show occur. This was the company who in 1966 urged the committee to permit voluntary standards rather than impose mandatory standards.

Congress should mandate a pedestrian protection standard by a specific date by amending this bill, S. 976.

<sup>2</sup> See Senate Commerce Committee hearings record, serial No. 90-89.

(5) Section 127(a) requires the Secretary to publicize the information supplied to the Secretary by vehicle manufacturers under the Department of Transportation tests for damage susceptibility and crash survivability. But this provision is not specific enough and thus repeats the deficiency of the 1966 act.

It is recommended that the committee develop a detailed program for consumer access to this information cheaply, expeditiously and at the most convenient places. The use of television should not be excluded to inform consumers of the existence of this information and where it can be obtained.

Evidence of past failure is abundant. For example, the Department of Transportation consumer information booklet is almost an unknown to the public; the Department does not publicize it well and dealers do not make it easily accessible to customers. This reduces severely the competitive forces that could be put to work.

In the recent compilation of consumer information braking performance of 1971 passenger cars supplied by the automobile manufacturers to the National Highway Traffic Safety Administration under the 1966 safety law, Ford vehicles dominated the lowest ranking automobile brake stopping capability. In the bottom eight out of 74 rankings, 11 of the 13 model vehicles were Ford-manufactured. Ford is obviously reluctant to supply customers with this notorious record which the law requires them to make easily available at the showrooms and to supply with every new vehicle. This is the second year in a row that such Ford braking performance dominated the lowest rankings. Without congressional stipulation, such a pattern would give Ford and other companies too many years to get a better idea.

Section 127(b) requires that any information about identification of parts, components, systems and subsystems damaged or displaced in vehicles be given to insurance companies by the Department of Transportation. This section should be amplified to assure that it is also available to the public. This section also requires the Secretary to report to the President and the Congress on the extent to which the auto insurance industry is utilizing damage susceptibility and crash survivability information in determining insurance premium rates. Why does it fail to require the insurance companies to actually rate cars on the basis of this information? Such a requirement will also spur the insurance companies to begin data systems which they now lack on the causes of accidents. This has been one of the most significant obstacles to developing market pressure on the auto industry by what should be countervailing powers such as the insurance industry. Also the Department of Transportation should be given authority under section 112 of the act to require information from insurance companies to comply with this bill's provisions.

To be more specific, how many taillights has Chevrolet sold to replace Chevrolet lights on existing cars which have been damaged at low-speed impact when rear ended? That would be the kind of documentation that would show the vested economic interest in a fragile, ornamental bumper.

The committee might also consider whether any improvements can be made in this vast area with the Government having its own research testing and proving ground facilities which indeed are stipulated in the 1966 law and still not implemented, as well as a mission-oriented

prototype program to actually build the prototype vehicles, systems, components that are suitable for mass production as a permanent yardstick for industrial prevarications, suppression and collusion in violation of the antitrust laws. The single most important program is this prototype, testing program, for in the actual performance, priorities are reordered and the facts speak for themselves.

I would like to also include a request for the following.

There is a lot of talk about what these changes will cost. I think the structure of the industry's testimony is based on a number of foundation stones; namely, that there are certain priorities such as safety and pollution and they should take first priority before this, and this is a tradeoff between property damage prevention and safety, and the consumer will ultimately have to pay for it, and the consumer has a right to choose and the costs are so high that there has to be a slowdown in the kind of changes requested under the various laws and the proposed bills. All of these are propositions to be examined, not articles of faith to be accepted.

For example, if there are priorities between, for example, expenditures on safety and pollution and expenditures in the property damage area or the repairability area, then let's bring in other priorities. Why build such big overpowered engines which cost more? Why not eliminate it and all styling and excessive product proliferation change which would save the industry almost \$2 billion a year or more per year and the consumer an immense markup beyond that?

For example, I think the previous witness gave the figure of under a hundred dollars for the cost of styling in terms of tooling. But the real costs are the costs to the consumer and the stepup-markings as it goes through the wholesale-retail consumer marketplace hierarchy.

(6) Section 127(b) (3) authorizes the Secretary to establish procedures requiring auto dealers to provide insurance cost data to prospective purchasers. This section should apply as well to information developed under section 112(d) of the existing law (consumer information program) and to the information required to be reported under Department of Transportation regulations by motor vehicle manufacturers under proposed section 125 and 126 to be added by the bill—that is damage susceptibility and crash survivability. A study last year by the Insurance Institute for Highway Safety and another study by the Department of Transportation showed that dealers most of the time fail to inform prospective purchasers of the consumer information materials. In the absence of sanctions directly to dealers, which should be added to section 10 of S. 976, the charade will go on and any government effort and expense to that point will be wasted.

(7) Section 128 of the bill requires the promulgation of Federal motor vehicle safety standards and property loss reduction standards effective January 1, 1975, under which vehicles must be designed and constructed to facilitate motor vehicle inspection (presumably meaning diagnosis of faults as well as ease of locating faults) and repair. Since the Department of Transportation has already testified—in March 1970—before Senator Hart's Antitrust and Monopoly Subcommittee—that a number of motor vehicle safety standards have already been issued by the Department and others are under development which incorporate provisions for reliability of critical vehicle com-

ponents, ease of diagnosing vehicle malfunctions, ease and accuracy of repairing safety critical parts, and reduction of vehicles' structural fragility, the bill should more specifically indicate the type of results expected by 1975, at least the performance standard by which the Department's activities can be measured.

The Department's outright violation of the statutory deadline for the issuance of used car standards—due on September 9, 1968—and still not issued—should be instructive to the committee.

Finally, the bill should provide the Department with explicit information procurement powers vis-a-vis the automotive industries. In the meantime, the committee should design a questionnaire which it should send to the industry, company by company, to accelerate the production of much needed information. Information about engineering dissent within the companies over designs that bilk the consumer, information about alternative component and systems design which could avoid the economic crimes and casualties due to contemporary vehicular design, overregistration of odometers and turning back odometers at the retail level, which is a flagrant violation. Also why GM's Motors Insurance Co. dislikes its parent company's Corvette. That immense secret data in MIC's files could be so useful for Congress' understanding and public enlightenment. Information about the extent of the "crash parts" industry is also needed. That is not my phrase, it is a phrase used by dealers and people in the industry who discuss the crash parts industry which is basically the sale of parts to replace those that are smashed up at low-speed impacts, often at under 5 miles per hour. It would be important to know the extent of this crash parts' industry to see how many sales in dollar terms the automobile industry will lose if it put bumpers on cars at 5- or 10-mile-per-hour protective levels. This would give us more understanding as to the kinds of statements that are being made resisting more adequate bumper protection and in a totally unsubstantiated way stating that a functional bumper to the 5-mile-an-hour level will cost the consumer \$100 or more per year.

A study over 10 years ago by a group of Harvard and MIT economists which I think has been cited to you before, showed that in the late fifties it was the judgment of these economists that the annual style change had a retail cost to the consumer of about \$700-plus, and that was way before these costs have gone up. That, of course, is a very significant proportion of the consumer's dollar and it allows a great deal of leeway to supplant this expenditure with the property damage prevention systems and the other improved qualities certainly which have priority over the styling.

Needless to say the priorities also should bring in the question of costs, production costs. The committee really cannot make a decision here unless the companies are willing to display their production costs. If they are going to say it costs the consumer too much, we can't improve this or do that, dealing with safety or pollution or property damage prevention, then, they should actually disclose these costs.

Needless to say that one of the most impressive things about the auto industry is the enormous efficiency, the enormous productivity factor efficiency which permits mass production of components to be produced at prices that would boggle the mind of the average consumer.

This efficiency is, of course, an area of great secrecy because if the consumer realized how little it cost to change things at the hardware

stage, he might become more insistent on the change being made. That holds true for government officials as well. The white-collar cost, the transportation, distribution markups—those are all constant costs as far as vehicle design is concerned, but where the industry is most efficient is in the area of actual manufacturing, and it is remarkable what they can do in terms of their mass production economies prior to markup, and that is a figure that really is relevant for disclosure.

There is also an important point to be made about whether the consumer will ultimately have to pay for it. This is the antithesis of the market system philosophy. A company which comes up here and stands up in public and says the consumer is going to have to pay for this excessive markup or if it is going to cost \$400 more the consumer will have to pay, how do they know? If they were really competing with one another they would not be able to say that they are going to automatically transfer the cost on to the consumer of a particular safety feature or a product improvement, because they would not know whether their competitor was going to say I am going to cut out styling in order to put in more safety so I do not have to transfer the cost on to the consumer.

This kind of attitude which is true of many other industries which are oligopolistic, simply saying as a categorical fact the consumer will have to pay for it, illustrates the enormous market imbalance between the few select producers and the large number of consumers. They can actually administer the transfer of these prices.

Once again the question of what the consumer will have to pay for raises a question: If indeed the consumer has been shortchanged over these years and he is going to be less shortchanged why don't these expenditures come out of profits? I recall reading that General Motors made \$600- some million worth of profits in the last quarter, perhaps more than they usually make because of the strike, but that company is twice as profitable in its return on investment as American industry in general.

There are economists who have made the claim that these are oligopoly profits, excess profits which would not occur if there was adequate competition over significant facets of the industry, horizontally and vertically. Why shouldn't this come out of profits? Why should the fact that the companies once they are caught by a Senate investigation that they are not doing well by the consumer, that they are in effect accelerating an aftermarket which is not necessary if proper design was implemented in the first place, why shouldn't this come out of profits? I think that is a good question to ask.

The other approach which is particularly ingenious by industry spokesmen is how they give an inflated cost figure, for example, to improve bumpers so they protect cars up to 5 miles per hour, and then they in effect assume that the auto insurance industry is not going to reduce their premiums, and they have a full cycle theory as to why they should not be subject to the dictates of this legislation. It is going to cost the consumer so much, no substantiation, and the auto insurance industry is not going to reduce the premium, and they have not showed they are going to reduce it because they want to keep their profits much higher.

Therefore, it does not pay for the consumer to have this kind of protective bumper. I mean, this is the kind of cycle argument which

rests on assumptions that are not disclosed and which rests on the assumption that nothing can make the auto insurance industry pay attention to declining loss claims in the readjustment down of its premiums. Needless to say, posting the course of action on these self-serving declarations requires an examination more thoroughly than has been the case.

Note the other argument, consumer choice, which is often paraded before Senate committees. What kind of consumer choice does the consumer now have? Did he ever have the consumer choice when buying Pontiacs or Cadillacs to delete the fins and take a \$200 price reduction? Did he ever have any consumer choice in the kinds of mandated styling changes? I would assume if it is to be extra cost optional it should be as to style rather than is the case where safety is often introduced as extra cost optional rather than the enormously costly styling changes.

Note again the argument that if a consumer wants to buy a Jaguar and pay \$8,000—actually a more relevant example in terms of numbers would be the Corvette, which I assume Mr. Nevin can be forgiven for not mentioning—but if he wanted to buy a Jaguar or a Corvette and the bumpers are so trivial that a 5-mile-an-hour collision would jack up damage cost to \$400 or \$500, then he should be able to do this, says Mr. Nevin and other spokesmen.

In the first place, I thought the point made by Mr. Sutcliffe in terms of the present existing liability system and people losing their policies because they ram into a car that generates that kind of avoidable damage was well taken, but there are other examples, too. There is a shortage of mechanics in this country, a very severe shortage of mechanics, and the more work the mechanics and other personnel in these areas have to do repairing cars that never had to be repaired in the first place, the less work and the less expertise they are going to develop in the more critical areas.

Our courts are overburdened enormously by accident litigation. That also generates a public interest factor into the kinds of standards that the committee is considering in the present bill.

There is also the problem of disabling cars on the highways. The worse a car is damaged the longer it is going to be on the highway, the longer it is going to raise the risk of something that is quite frequent, the secondary accident, the cars coming up and smashing into the cars that are on the highway. We see these things I think in a way where the highway accident injury transport automobile system is so interwoven in relations between people and the public interest that to make that kind of statement about consumer choice when so much real consumer choice is prevented or deprived I think is not particularly responsible.

The final point I would like to make deals with the styling issue, and I would like to submit later for the record the Yale Law Journal<sup>1</sup> note on styling as an anticompetitive factor and as a high cost factor, furthering concentration in the automobile industry, a remarkably original job, which I think will do some of the work for the Antitrust Division which the Antitrust Division has not done in pursuance of its own enforcement missions.

I think the committee should know by now that no more than 10 percent of what any consumer law the legislature tells the executive

<sup>1</sup> See p. 1315.

branch to do ever gets done. In some cases the percentage is much less. Measured against the weakness and the gaps in the present bill, what would 10 percent of that give the consumer in justice or the corporate institutions in law and order?

I think one of the reasons perhaps why Senator Griffin became somewhat disappointed by my comments about the committee is perhaps the fact that he has not been around on this committee to listen to the utter unchangeableness of the position of the Department of Transportation since 1966. We are dealing here with a committee's will which has been flouted significantly, substantially, a committee that has held oversight hearings, has gotten assurances which have not backed up, which indeed have not even been recognized subsequent to the committee's hearings; we are dealing with an entrenched obstinance on the part of a department in the executive branch from even meeting statutory deadlines that are in the law.

I think, of course, the Department deserves a critical scrutiny from the chairman when it comes up before the hearing, but the last resort of the citizen is this committee. What else is there left? What committee has the authority to get the information? What committee has the authority to recommend the kinds of changes and sanctions that will get something done?

I will just leave you with one question. Here we have a situation where American consumers are bilked out of billions of dollars a year through unnecessary auto repair costs, through fragile bumpers that generate hundreds of millions of dollars of avoidable damage, through a retail and insurance scheme that piles on the costs even more, and against this tragic situation of waste of consumer income, which can be used to purchase other, more functional goods and services that are so badly needed, including housing, medical care, health, and the like, against this background, is there anybody in the auto industry today or in the Department of Transportation who will even be demoted or lose his job as a result of this volume after volume of facts showing gross irresponsibility, gross flouting of statutory mandates and gross contempt toward the consumer? The answer is "No."

As long as institutions are run in Government and in business by individuals who have absolutely no exposure to legal sanctions, minor or major, these institutions will continue to in effect flout the law and to flout common standards of decency in the marketplace and to suppress the creativity and initiative within these Government and corporate institutions which often do not get to first base because the rule in a bureaucracy is that you get along by going along.

Until we face the problem of sanction in Government and in corporations and in any large organizations, all this that we are doing is in effect going to be so much charade, and I think after 5 years and after looking over the records of the hearings it can be said that the legislation in 1966 has been a tragic failure in the automotive and tire safety areas, and although it has been a tragic failure, it has been more successful than any other consumer bill in the last 5 years passed by this committee.

Thank you.

Senator HART. Thank you, Mr. Nader.

No matter how I respond, it will be interpreted as either agreeing or disagreeing with all of your gospel.

I would like to focus on that very concluding comment, not to twist it either. As you recite deadlines that have gone unmet, continuing design patterns which contribute to both personal injury and property damage, I agree with you that the legislation and the agencies—that is, the Congress and the agencies and the industry have not performed as one would have thought, and yet with respect to the legislation, though it may be small comfort to the consumer advocates, it has probably produced more progress than anything that has come through the pipeline here.

I know what a critic of the system would say, that proves the system produces damn little, but those of us who are trying to get anything through the pipeline always relate the product to the energy we put in to get that little through.

So we tend to overestimate the significance of what we do. To the extent progress can be said to have been made in this particular area, while your views of Detroit continue to be very poor, I continue to subscribe to the belief that you more than anyone else in this country has contributed to that improvement. You are very harsh with respect to the legislative proposal that you analyze here, which happens to be mine, but some of that criticism I think is constructive. Some of your suggestions with respect to the improvement that we could make I think are good.

My views initially in Detroit are not quite as bad as yours, but nevertheless I am not their favorite Senator.

You commented at length on S. 976. You were invited to comment on the no-fault insurance bill S. 945 and the group insurance one, S. 946. Would you be prepared to make comment on those for the record?

Mr. NADER. I haven't studied the bills, Senator. I can say this much, however. One preliminary note, there is no criminal penalty in the auto safety legislation, but in this bill dealing with no-fault, you have got three instances of criminal penalties.

One applies to an individual motorist who doesn't comply with the provisions of the bill, and I find that an example of the double standard that I don't think should be the case when it comes to the automotive industry, particularly since the violations under the insurance bill are far less serious on an individual basis than could be the violations coming from the auto industry under the Automobile Safety and Tire Act.

I would like to just make the following comments. I haven't studied the bills in detail. I restricted my comments to S. 976 because of its preventative thrust, the system of insurance claims resolution in this country is obviously an abominable one and tremendously wasteful and has been indicted again and again by scholars and practitioners alike—government practitioners, and you could hardly conceive of a more cruel system in terms of the numbers of people who don't receive any compensation for their injuries as well as the injustices that often occur within the framework of compensation.

As far as changes are concerned, the first recognition is who has a vested interest in the present system, and the insurance industry has substantial vested interest, certainly a portion of it. The plaintiff's bar has a substantial vested interest. The defense bar has a substantial vested interest.

In deciding what other proposals should be made, I think first we have to ask ourselves to what extent will all of these vested interests distort and ruin any proposal that now is made. In anticipating that kind of countering strategy, the bill might have provisions that would consider that kind of rear guard or ruining impact.

I bring before your attention, if it hasn't been brought before, the Puerto Rican system which came into effect about a year and a half ago which is a Government-run system where the premium is collected, I believe it is \$35 a year at the time of registering the vehicle. The experience under that system, which is now available, is almost too good to be true, and while it is clear that the Puerto Rican situation is not quite analogous with the mainland situation, particularly with regard to the expectation levels of recovery and the number of motorists who are insured in this country, it bears close watching.

In short, the suggestion is that the committee give particular attention to setting up a yardstick in this area, a Government-run yardstick much like the Tennessee Valley Authority in order to permit an undiluted attempt at experimentation for a more rational system.

It doesn't have to be a very large system, but the fact that it does stand as a yardstick by which to measure private industry's performance I think would be very salutary.

Senator HART. We did have testimony one day last week from the administrator of the Puerto Rican system and his strong recommendation in support is in the record.

We will have some trouble I assume getting a majority of votes for a no-fault concept. So, if there is something you would like to add to the record in support of this concept, we would welcome it.

Senator HART. The Senator from Alaska?

Senator STEVENS. Mr. Chairman, I don't have any questions. I would like to make a statement.

I think that you could accomplish a great deal more than what you wanted to, if you would give credit where credit is due. I am of the impression that the American public believes that there has been a great deal of progress in the field of safety; that we are committing a great deal more of the attention of the manufacturing process to design safety problems.

On the other hand, I find it staggering to realize that one out of six people in this country buying new cars are buying foreign cars. Yet no part of your statement pertains to the foreign cars that represent the loss of dollars, the loss of jobs for the United States, and the total inability of the Congress to deal with product safety as far as the foreign manufacturer of automobiles is concerned.

I think it should get a great deal more attention from organizations such as yours. The concept of holding up the American manufacturers to the type of adverse criticism that you have given them and at the same time leaving their competitors completely free of any criticism and completely free to come into our markets with what I consider to be absolutely inferior products, seems to me to be a definite defect in your approach.

I must say also that I take great umbrage in your comment about my colleague. He has been quite attentive to his legislative duties. He has been around here for 6 years, and I think that comment was practically inexcusable in view of the fact that he was just here and left.

We are at a period of 1:15 waiting for lunch. It is breakfast for me, since I just flew in from Alaska. As a practical matter, my colleague has duties on the floor, and I thought the comments you made concerning him just after he left were inexcusable.

Senator HART. Would you yield on that?

If I had thought the record indicated that Mr. Nader was criticizing Senator Griffin's absence, I would have interjected, too. I disagree with Senator Stevens.

Senator STEVENS. He has been on this committee since 1966, and I don't understand your comment.

Mr. NADER. It was a comment directed to all the hearings held. He wasn't here for a lot of the hearings.

Senator STEVENS. I am not here for all the hearings either. I have three other committees and 16 other subcommittees. The trouble is that it gives the impression to his constituents that he is neglecting his duties, which you know is not true.

Mr. NADER. It just states a fact, Senator. There was no attempt to say that he could be in six places at one time.

Senator STEVENS. That again reflects the total caliber of your statement, Mr. Nader. You look for the worst in people and not for what is good in this country.

Mr. NADER. Let me say first you are wrong on the law. All imports have to be geared to the same standards that domestic products have to be geared for. My stand on foreign imports is so repetitive and clear there is no point in going through it here when they only represent about 10 percent of vehicles sold and the rest of the imports are American produced vehicles imported.

My statements on the Volkswagen have been laid before this committee again and again, as being the most dangerous car in significant numbers on the American highways. If I were to say the reason you made that statement is because at the time I was testifying you weren't here, that is a statement of fact.

Senator STEVENS. It is true.

Mr. NADER. It is not a statement that you were neglecting your duties. I was just trying to say that if Senator Griffin had the opportunity to absorb the full thrust of the testimony as some Senators had—they are chairmen of the subcommittee, so they have to be here—then it would be different.

I think you can compare Senator Griffin and Senator Hartke on that basis. Senator Hartke sat through many hours of hearings.

Senator STEVENS. The great freedom that you apparently seem to have is to occupy your total time with one subject when the rest of the world seems to be dealing with the total problems of living. The Senators on this committee happen to be dealing with three or four other committees. I accept your comment about the Volkswagen. I am happy to hear it. But an important fact still remains which you neglected to mention in your statement. The fact is that you are not giving credit to the American industry where it is due for the progress that has been made.

Mr. NADER. Do you give credit to a burglar because he doesn't burglarize 90 percent of the time? What kind of nonsense is that? We are talking about pathology here. We are not talking about the fact that a car can go from New York to Los Angeles without losing its transmission. We are talking about documented fraud, about the kinds

of things that Senator Hart has been documenting year after year, billions of dollars.

Senator STEVENS. There are 51 jurisdictions in this country, 50 States and the Federal Government. If you have proof of documented fraud, you should take it to the grand juries throughout this country and the Federal grand juries in every State and get indictments. By coming in here and indicating the industry before a committee without facts and without proof, you are committing what you say they are.

Mr. NADER. That is not true. Do you want me to read the 18 volumes before this committee and the Senate Antitrust Committee? What do you call them? Do you want me to reproduce them in full? The facts are overwhelming. The bumpers on an Impala rear ended at 5 miles per hour results in \$440 damage. What kind of utter nonsense and outrage is that?

Senator STEVENS. You are a lawyer and I am a lawyer. You equate that with criminal fraud. Take it to a grand jury if you can, but don't take it to a congressional committee.

Mr. NADER. You find me a district attorney with the guts to do that. I am looking for legislators with the guts to do that.

Senator STEVENS. What do you want us to do?

Mr. NADER. I want you to make this a criminal penalty in here. If you can penalize some John Doe in this no-fault insurance bill.

Senator STEVENS. There are criminal fraud penalties today in the Federal laws and in the State laws. If you can prove criminal fraud on any commodity, you can take it to a grand jury.

Mr. NADER. There is absolutely no criminal penalty under the Motor Vehicle Safety Act for the corporations in the auto industry who willfully and knowingly violate the safety standards. That was taken out and clear legislative history showed that.

Senator STEVENS. That is a lot different than what you indicated in your statement where you speak of the criminal fraud or criminal negligence in the design of motor vehicles. If you can prove that somebody has committed a criminal fraud in the design of motor vehicles, you can take it into court the same as you can a toaster. You and I know it.

Mr. NADER. Tell me how.

Senator STEVENS. I happen to agree with you on many of the things you say but you destroy the concept of being able to achieve progress by refusing to recognize it.

Mr. NADER. It is time, Senator, to recognize that the major safety features put in automobiles went in in 1967 and 1968, and there has hardly been a whit of progress since then, when there should have been even more progress. It has almost come to an entire standstill. And bumper design has produced more property damage than even before.

Senator STEVENS. Some time you and I ought to sit down and talk about it.

Mr. NADER. I wish your late law partner was here to give some of the evidence that he adduced in his own litigation.

Senator STEVENS. Thank you for mentioning him and I am happy to see you recognize him. He was a brilliant man and he died prematurely. I thought a great deal of him.

As a practical matter, he would agree with me about the concept of being positive as opposed to being negative in order to achieve progress.

Mr. NADER. The companies are positive enough with \$500 million worth of ads. We are giving a critique here. We are dealing with the evidence necessary to pass the bill. If you want me to say that a car today will go from coast to coast at a higher frequency without losing its transmission than 35 years ago, I will say it. It is true.

But the point is we are dealing with the frauds, the defects, the safety hazards. That is what we are dealing with before this committee.

Senator STEVENS. Thank you, Mr. Chairman.

Senator HART. Until 15 minutes ago, I regretted we hadn't concluded earlier. But the last 15 minutes have awakened us all.

Senator STEVENS. It is because I haven't had breakfast, Mr. Chairman.

Senator HART. Let me make a statement. I don't know what my attitude will be with respect to certain of the matters you raised if I was from Idaho or Wyoming. I know that about myself. But I have attempted to do what I feel should be done, and I will match my track record with the rest of them.

Mr. NADER. You certainly can, Senator.

Senator HART. Mr. Sutcliffe.

Mr. SUTCLIFFE. Mr. Nader, in your prepared statement you asked that the legislation S. 976 set Federal rates to mandate reduction for any savings that are accomplished by mandatory property loss reduction standards. Would you comment upon that in light of the present rate regulation structure at the State level?

Are you asking us to overturn the McCarran-Ferguson Act to some extent and regulate insurance rates at the Federal level?

Mr. NADER. Yes; particularly when they deal with vehicle design, because the same reason that supported the Federal Government having one national design for motor vehicle safety follows through here quite logically.

Mr. SUTCLIFFE. Do you see a beneficial impact upon vehicle design, both in property loss reduction characteristics and auto safety characteristics if the premium costs are assessed on an individual basis on a first-party no-fault program as opposed to a liability no-fault combination?

Mr. NADER. I really would like to see that actually occur before being able to comment on it for the following reason, that the insurance companies can make the same kinds of calculations under the third-party system as they do under the first. Unless you get an insurance company that only insures one line of vehicles, that would only insure 1970 Pontiacs—

Mr. SUTCLIFFE. Let me bring it down to a more specific level. Apparently consumer choice to some extent governs the purchase of the different models of vehicles. You have pointed out the limitations of consumer choice in the present automobile population. Supposing an automobile population that had consumer choice differentials as to property loss reduction standards and bodily injury characteristics, would the indicators to the consuming public by way of the premium dollar be larger and more pronounced under a first-party system of insurance rather than under a combination liability first-party coverage?

In other words, do you or do you not agree with Professor Loescher's testimony in the House concerning the impact of no-fault upon automobile design characteristics?

Mr. NADER. I really don't see any evidence to indicate that it would be less under first-party.

Mr. SUTCLIFFE. Would the indicator be more? Would the premium reduction be more?

Mr. NADER. No; I am talking about the premium, no. There is no indication that it would be cheaper in fact on that basis, unless there is an additional stimulus, because you see the insurance companies can do the same thing now that they would be able to do under the first party. They have got roughly the same universe of vehicles, the same actuarial calculations can be made. So there has to be an additional impulse somehow 'o make his prediction more supportable.

I don't see it going in the natural order of things.

Mr. SUTCLIFFE. But do you see any differentials between vehicles being greater as to the insurance prices under a first-party system than under a third-party/first-party combination as we presently have?

Mr. NADER. You mean quite apart from the rating of vehicles?

Mr. SUTCLIFFE. You have postulated Federal rate regulation that would mandate a reflection of savings in the insurance premium dollar. Therefore, there would be come rate differential that the consumer could be told about between car "A" and car "B".

Under a first-party liability system, that rate differential would be on the order of three times the magnitude under the present system according to Professor Loescher's testimony. If that were the case, it would seem that the market system would generate more consumer choice toward those vehicles which were safer and which produced less property damage.

I am simply asking you whether or not you agree with that analysis?

Mr. NADER. If you accept his assumption, definitely. In other words, there is a very elastic response to different insurance rates on the part of the consumer. I think the high horse-powered engine situation which Mr. Nevin referred to is an example of that.

Mr. SUTCLIFFE. But other than that—

Mr. NADER. Other than that, I really can't say.

Mr. SUTCLIFFE. You have made no analysis of the impact of reform efforts upon your desires to produce safer cars or cars less susceptible to damage?

Mr. NADER. No impact whether they would really do as predicted that they would as focused on their vehicles under the first-party system, because it is their vehicle rather than a third party.

Mr. SUTCLIFFE. You have no other comments to make about a change in the reparations system relative to the distribution of money to those people that are injured, you make no statement in support of or in opposition to the concept of no-fault automobile insurance?

Mr. NADER. First of all, I am not going to comment on the bill because I haven't studied it carefully. In principle, I am in favor of the Government yardstick; I am in favor of compensation for pain and suffering; I am in favor of alternative option for the injured plaintiff, if he doesn't want to go under the no-fault system. And under those conditions, a no-fault system, although you have to say what kind of no-fault system, then a no-fault system principle would be advisable given all those conditions. There are so many no-fault plans now ranging from Massachusetts to the various group pro-

posals throughout the States and the Congress that we would have to have a more full study.

Mr. SUTCLIFFE. Thank you, Mr. Chairman.

Senator HART. Give it a little more study, because I have an instinctive feeling that you will come out in the direction I think will be helpful.

Mr. NADER. I must say that the issue, Senator, raised by Senator Stevens is really quite significant, dealing with criminal fraud. I think anybody who knows about the way State attorney generals operate, you have to virtually give them the entire case before they may move in terms of the evidence. That is why it is so critical for this bill and other bills to give the Government information procurement powers from the industry.

If we knew about the Corvair carbon monoxide situation when we should have back in the early sixties, there wouldn't be over a million people today going into their Corvairs breathing levels up to 200 or 300 part per million, as the test will reveal in about a week or two, and it is a colorless, odorless, and tasteless gas. Complaints by motorists in the hundreds to General Motors received back a form letter saying their engine is not in tune or their oil is too dirty, and this has been going on for years, even though General Motors has settled some of these cases for very substantial sums out of court, and there is evidence that top management knew about the defect in 1961, documented evidence, and all this will come out, but the point is no citizen could possibly get a hold of this material and give it to a State attorney general, even if the State attorney general is the one out a hundred who will move against the auto industry. That is why critical to all of this is the twin program of effective sanctions and effective disclosure of detailed information.

Really, it is amazing to hear Ford Motor Co. say bumpers will cost another \$100 without being required to lay it out in detail. I think if the committee's staff look at the Ford Motor Co.'s cost data, the first time auto company cost data has ever been made available in public which was included in the Senate Small Business hearing in 1968, that they will see the enormous productive efficiencies in that industry, and how things cost so much less than the auto companies say it cost.

Senator HART. On that one point of bumper cost, I am advised by staff that on tomorrow the committee will receive information that should be informative and helpful.

Mr. NADER. Just another additional point, Senator. General Motors and other companies have stated all the changes they have to make in a car when they make a stronger bumper. There is a kind of radiating consequence back to the various parts of the car. What they are really saying is over the years they have premised all of these parts and structures on the basis of a fragile, worthless bumper, which generates great sales in the aftermarket for them.

Now that we are being urged to require to put bumpers on the cars, they are going to transfer all the costs of shifting around these features. My point is, if it is really conscious, deliberate avoidance of protective systems and the fraud that it is, then the cost of that should be absorbed by the company. It is bad enough that billions of dollars have been leached out of consumer, which will never be returned to the con-

sumers—it is bad enough that we can't look to the past for consumer reimbursement, we have to look to the future only, without saying because of this anticipation the companies have to transfer all the costs on to the consumer.

Senator HART. Mr. Nader, thank you very much.

We recess hopefully to resume at 2:30.

(The following information was subsequently received for the record:)

MOTORS INSURANCE CORP.,  
767 Fifth Avenue,  
New York, N.Y.

HON. TED STEVENS,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR STEVENS: In response to your expression of interest, I would like to review the facts concerning MIC's insurance of Corvettes.

Prior to your colloquy with Ralph Nader during the May 10 hearing of the Senate Commerce Committee, he said in part: "GM's Motors Insurance Company dislikes its parent company's Corvette." This was part of a statement that he made urging the Committee to elicit information of this type from car manufacturers. We can only assume that Mr. Nader was not adequately informed on this point or misunderstands what MIC actually does. In short, MIC does insure Corvettes against physical damage, contrary to the implication.

In applying its underwriting policies MIC *makes no distinction by make or model* as to whether a qualified driver may be insured, regardless of what type of GM vehicle he wishes to insure. However, as a matter of normal insurance practice, MIC does take into consideration the same standards that are used generally by the industry when drivers of high performance cars are insured.

It should be understood that MIC and its subsidiary, the CIM Insurance Corporation, write only automobile physical damage insurance, including fire, theft (comprehensive) and collision, primarily with respect to automobiles sold by GM dealers. They do not write liability insurance.

Our underwriting objective is to provide insurance for every qualified applicant who is licensed to operate a motor vehicle, provided he does not have an unreasonably poor record of accidents and violations. To meet this objective, MIC has a broad range of classifications designed to accommodate essentially every risk, except the very worst.

If we can be of further assistance in clarifying other matters concerning MIC physical damage insurance coverage, please let me know. Thank you for this opportunity to correct this mis-statement of MIC's attitude toward providing physical damage insurance on Corvettes.

Sincerely,

FRANK A. MINGLE.

#### AFTERNOON SESSION

Senator GRIFFIN (presiding). The committee will be in order. The subcommittee would be pleased to hear now from Mr. Mack W. Worden, of General Motors, and if you will come forward, Mr. Worden, and introduce those who are with you.

#### STATEMENT OF MACK W. WORDEN, VICE PRESIDENT, MARKETING STAFF, GENERAL MOTORS CORP.; ACCOMPANIED BY J. R. DOIDGE, ENGINEERING STAFF; AND C. R. SHARP, LEGAL STAFF

Mr. WORDEN. Mr. Chairman, I realize this has been a long day. I can read the complete statement or I can summarize the statement. It has been submitted to the committee. As the chairman would wish.

Senator GRIFFIN. Well, I will leave the decision to you, Mr. Worden.

We will be glad to accommodate you in any manner you wish. If you would like to summarize, that would be fine.

Mr. WORDEN. Then if it be my decision, I think I should read into the record the entire statement.

Senator GRIFFIN. Will you introduce those whose are with you?

Mr. WORDEN. I will do so in the course of my statement. Mr. Chairman, and members of the staff of the Senate Commerce Committee, this statement is submitted by General Motors Corp. in response to your invitation to present our comments on S. 976, the Motor Vehicle Information and Cost Savings Act.

I am Mack W. Worden, vice president in charge of the General Motors marketing staff. With me, on my left, J. R. Doidge, of the engineering staff, and on my right, Mr. C. R. Sharp of the legal staff.

The principal intent of this legislation, as we understand it, is to provide a means for reducing motor vehicle repair costs to the owner—whether these costs are incurred by him directly in repair costs, or indirectly as they may be reflected in insurance premiums he pays.

An equally important purpose of the bill is to achieve this objective at no sacrifice in safety or occupant protection. As stated in section 125(b), property loss reduction standards must be compatible with safety standards issued to protect motor vehicle occupants.

We should also point out the possibility always exists that repair costs may be influenced by the addition of certain safety-related components. Thus, while the two objectives will be compatible in many instances, there may be circumstances under which they will not be.

We are in agreement with the sponsors of this legislation on the basic premise—the desirability of lowering the cost to car owners of vehicle repairs and collision insurance. We have a great motivation to reduce in any way possible the overall cost of our products to the consumer, because higher costs would tend to erode our business.

Moreover, lest anyone misread the seriousness of our concern, we do not regard auto insurance as merely an incidental expense to car ownership. Indeed, funds spent for insurance or repair are part of a car owner's total budget set aside for automobile transportation, which must compete directly with other major necessities for the consumer dollar. We fully recognize that the more a car owner must spend for insurance and repairs, the less he has to spend for the car itself.

As to the significant issues posed by the bill, we are in complete accord with some of these, and with others we agree in terms of the goal but not in the method of achieving it.

As to one of the major concepts of the bill, repairability rating, we will propose an alternative program that, in our judgment would be more practicable than the procedures in sections 126 and 127.

We propose now to discuss in sequence the major provisions of the legislation.

First, the redefinition of the term "passenger car." At the outset, the bill changes and adds several definitions to the National Traffic and Motor Vehicle Safety Act of 1966, or the Safety Act. Of major significance is the addition to the Safety Act of a new definition of "passenger motor vehicle." In effect, this would negate the National Highway Traffic Safety Administration's (NHTSA) administrative regulation defining "passenger car." The present definition distinguishes differences among passenger cars, multipurpose passenger vehicles and buses. These distinctions would be eliminated by the S. 976 definition.

There are 44 existing Federal motor vehicle safety standards and regulations, and even more proposals now pending for comment. Additionally, various items of safety equipment and vehicles now in various stages of design, development, and production are affected by the distinctions among types of vehicles established in the regulations.

By retaining the present NHTSA definitions of vehicle classes, confusion as to application of current standards and the administrative burden of resolving this confusion would be avoided. Revising existing standards to conform to the S. 976 definition would be an extremely cumbersome process.

Now as to redefinition of motor vehicle safety. S 976 would change the definition of "motor vehicle safety" in the Safety Act by placing property damage, or "unnecessary damage to motor vehicles," on an equal statutory footing with "risk of death or injury to persons."

The definition of "motor vehicle safety" is basic to the Safety Act. It defines the scope and purpose of the Federal Government's activities in this area. On the other hand, property loss reduction is an entirely different objective, with separate design requirements.

It is important not to dilute the urgency and emphasis now given to safety. As presently drafted, sections 1 through 4 of S. 976 seemingly equate occupant safety with property loss reduction, whereas sections 5 through 15 deal almost entirely with property loss reduction.

We believe this latter approach should be followed throughout the bill.

Now as to rating for damageability and repairability. Designing vehicles with greater resistance to damage is only one consideration that a manufacturer must take into account in meeting the requirements of customers and the public interest.

Others include safety, reliability, durability, emissions, performance, comfort, convenience, appearance and very importantly, the lowest overall cost of car ownership—including both economy of operation and initial cost to the consumer.

Designing simply for low repair costs will not necessarily contribute to the lowest overall cost of car ownership or the highest value product. Designs that would potentially reduce repair costs are not necessarily compatible with efficient manufacturing designs. Manufacturing efficiency has an important bearing on the original price of the car to the consumer.

For example, the welding of certain body components into a single unit—the rear quarter panel, and the adjacent sheet metal and substructure for instance—is less costly to produce, and is structurally stronger.

Moreover, welding this assembly to the body results in a stronger total structure.

These substantial advantages are reflected in the cost of car ownership to the consumer. However, the cost of repairing or replacing this single component could exceed that of a rear quarter body structure consisting of several serviceable sections that may be bolted to the body.

Thus, while we support the rating of vehicles on the basis of damage susceptibility and subsequent repair costs, this could offset the cost savings objective of this bill.

We are concerned, too, that any rating procedure provide some type of credit for safety-related items. Such features would reduce injury to passengers, but some could increase accident repair costs.

Some of these important safety features add to the complexity of vehicles, and, therefore, their potential damage repair costs.

Thus, S. 976 could penalize rather than reward a competitive manufacturer who is a leader in safety innovation, with the result of discouraging voluntary safety improvement.

An finally, we recommend that the proposed testing of predistribution production models not be required. Later in our statement, we will offer for your consideration an alternative rating system.

As to predistribution testing, the testing provisions of section 126 of the bill raise several important questions. For example, (1) When must tests be conducted? (2) How many tests must a manufacturer conduct? (3) What procedures will control the tests?

First, when to test? The key problem in this area is use of "production models," as required by section 126(b)(1). A manufacturer would have to run tests very late in the period just before new model announcement dates—between August 15 and September 15—when dealers all over the country are acquiring new car inventories and are beginning to sell cars. The testing and reporting program envisioned would be practically impossible to accomplish within the probable time period allocated.

Second, how many tests? Presumably, a number of different tests would have to be run at the required 5, 10, and 15 miles per hour to assess the repairability potential of each car in various accident situations. The Secretary might want to test for impacts to the front, rear, side, front corner, and rear corner in order to assure meaningful information for the public.

This could mean 15 tests per model. The numbers could be proportionately larger should the Secretary decide, as the bill allows, to test at higher speeds.

Optional equipment, such as air conditioning, might require additional tests, as different repair factors would be involved.

Third, how to run the test. In addition to the problems discussed above, which bear importantly on the way tests are conducted, there is the difficult problem of standardizing on the scientific criteria for car-to-car impacts. These would be essential to provide data representative of the real world of accident experience.

There is also the difficulty of defining such terms as "normal speeds" and "normal operating conditions," as prescribed in section 125 (a) and (d) (1).

With the number of variables possible in real life accident situations, it is difficult to conceive how a test could be devised which would not be as misrepresentative of accidents that regularly can and do happen as it would be representative of others.

Moreover, the need for subjective judgments of test results introduces a further element of difficulty. Human evaluation will have to say whether the part should be repaired or replaced, how much labor time would be involved and at what labor rate per hour.

Here is an alternate rating proposal.

As suggested earlier, we believe a rating index can be developed which realistically reflects both a vehicle's vulnerability to damage

and its cost to repair. It would at the same time avoid the unmanageable problems of extensive predistribution testing.

We say realistically because it would rely heavily on actual—real world—accident data.

In the course of evolving this system, we examined the structure of other rating systems, including the Folksam system. This system was discussed by representatives of Folksam Insurance Group of Sweden in testimony before the Senate Antitrust and Monopoly Subcommittee in 1969.

Briefly, we propose a rating index number for each make and model. This would be computed by comparing actual accident claims on the vehicle being rated to the average of all claims for vehicles of a similar class, based on previous years' models.

When a new model or design feature is to be introduced, an estimated index number would be developed. This would be based on the new model's parts and replacement labor costs for certain frequently damaged parts. The estimated index for the new model would be modified to a permanent index as actual accident data become available.

It is proposed that essential data on all makes and models would be provided to a rating board for tabulation and publication.

The system could also provide a method for allowing a rating offset for the voluntary installation of safety and antitheft devices which, while providing increased protection, could also increase repair costs.

We believe the concept can be developed into an equitable system for all concerned. General Motors is prepared to work with any and all interested parties in developing the system further, and in aiding in its implementation.

We would be pleased to have our staff people who have studied this proposed rating system set a date to discuss it with your staff in greater detail if you wish.

Now as to bumper requirements. On April 14, the Department of Transportation issued Federal Motor Vehicle Safety Standard No. 215. This new standard requires that, beginning September 1, 1972, passenger car front bumpers be capable of withstanding a 5-mile-per-hour impact into a fixed barrier and rear bumpers, 2½-mile-per-hour barrier impact, without damage to the car's safety related systems.

May I add that the barrier impact of 5 miles per hour in the front is equal to a 10-mile-per-hour car-to-car impact, and the 2½-mile-per-hour barrier impact in the rear is equal to a 5-mile-per-hour car-to-car impact.

All 1973 model General Motors passenger cars have been designed and will be built to meet this portion of the standard, and the majority of models will go beyond these requirements.

Motor vehicle safety standard No. 215 additionally prescribes new bumper regulations to take effect 1 year later. In addition to the fixed barrier test, after September 1, 1973, front bumpers would be required to withstand 5-mile-per-hour impacts and rear bumpers 4-mile-per-hour impacts from several directions, using a pendulum device.

This change in the standard, along with bumper height requirements, would require another sequence of redesign and retooling of the bumper system—not merely of the bumpers themselves, but, more importantly, of their supporting structures as well.

In the property loss reduction standards proposed in S. 976, yet another modification in bumper standards would become effective just 15 months later.

Thus, the industry faces the possibility of a sequence of extensive changes in rear bumper systems. Any change in the level of bumper protection is a complex matter. This is not just a matter of installing a different strip of steel for the bumper face bar. We have to take into account bumper height and many other things that go into bumper systems.

Meeting these standards may require increasing the length of the car in the rear and providing additional clearance for energy-absorber displacement. This could involve redesigning and retooling of the bumper, new shock absorber units, revised rear quarter panels, rear body panels, deck lids, and trunk floor panels.

Additionally, the gasoline tank filler neck access and some tail lamps would have to be moved in some models. Trunk capacity may be reduced because of the location of absorber units.

Because the standard for rear bumper systems proposed in this legislation involves many complex matters of design, engineering detail, and leadtime, administrative discretion, in our judgment, would be the best means of assuring optimum cost-benefit to the consumer in setting standards.

Therefore, we urge that the Secretary be authorized to prescribe standards, if needed, on an administrative basis.

In keeping with our earlier recommendation, we again urge that any bumper standards be applied to passenger motor vehicles as they are presently defined by the National Highway Traffic Safety Administration. In this connection, we wish to point out that the property loss reduction standard set forth in section 125(c) relating to bumpers in this bill embraces all motor vehicles.

Now as to motor vehicle inspection, and registrations which pertain to title V in the bill. General Motors has consistently supported periodic motor vehicle inspection (PMVI) as an important element in a complete traffic safety program.

In 1954, the Automobile Manufacturers Association, of which GM is a member, adopted a policy favoring periodic motor vehicle safety inspection. That policy has been reaffirmed by AMA many times since 1954, the most recent being less than 3 weeks ago at the National Symposium on Diagnostic Vehicle Inspection. On February 8, 1966, James M. Roche, now chairman of General Motors, endorsed PMVI in a speech to the Automotive Service Industries Association convention in New York City.

A description of the GM position on periodic inspection appears in some detail in part 3 of the record of hearings on the automotive repair industry held by the Senate Subcommittee on Antitrust and Monopoly. We will be pleased to submit a copy of this testimony, if you wish, for the record of this hearing.

S. 976 would require that highway safety program standard No. 1 be amended to provide for additional inspection whenever the title to the vehicle is transferred for purposes other than resale. Inspection would also be required when damage repairs are made on safety-related parts.

We believe the expanded inspection provisions of this bill need to be examined to determine whether in fact a cost benefit would accrue

to the consumer. For example, a single car might have to go through inspection in 3 consecutive months because of the mechanics of this inspection provision. In January, it might go through postdamage repair inspection, in February, periodic motor vehicle inspection, and in March, a transfer inspection. Such a series of inspections would be costly to the consumer. In our judgment, a good PMVI program would suffice.

As to uniform State programs on registrations and titling—General Motors has supported—and continues to support—uniform State registrations and titling requirements of S. 976 that are similar to those published by the National Committee on Uniform Traffic Laws and Ordinances.

As to Federal funds for inspection and titling—finally, the bill provides that funds from the highway trust fund could be used to partially finance the State programs for motor vehicle inspection and titling.

General Motors does not oppose this. The Federal Aid Highway Act of 1970 already provides for this financing.

In summary, two of the very important areas in which we have been working—and will continue to work—are: first, in designing and building cars so they require less repair and service, and second, to make it easier to perform repairs and service when they are required.

As we have pointed out, all our 1973 model cars will meet the 1973 bumper standards, and most of them will go beyond those standards. Our forward design program is directed toward making our cars less vulnerable to crash damage, and easier to repair if damaged.

In order to manufacture cars that require less service, we are designing and building greater durability and reduced maintenance requirements into our products. For example, you no longer hear of cars needing cylinder reboring or complete engine overhaul and we have longer tire life.

Also, intervals between chassis lubrication and engine oil changes have been extended.

To make servicing easier when it is required, a GM service research group is working on development and improvement of diagnostic and repair techniques, as well as the equipment used in making these repairs.

Improved techniques are widely disseminated to those who make repairs. Improvements in existing equipment, or ideas for new equipment, are made readily available to the equipment manufacturers.

In closing, we would like to restate two principal points of our presentation:

1. Repairability rating: We agree that repair costs must be reduced, and that property loss reduction standards and a repairability rating may be helpful in achieving this objective. However, we believe that a rating system closely geared to actual accident experience, as opposed to simulated impacts, is more workable than the predistribution tests proposed in S. 976.

2. Bumper standards: Establishing any level of bumper protection is a complex matter involving a substantial number of component changes and design modifications. The Secretary of Transportation should be empowered to issue bumper regulations providing optimum cost-benefits to the customer—in terms of both new system costs and potential insurance premium savings.

This concludes our prepared statement on S. 976. Thank you for your kind attention.

Senator GRIFFIN. Thank you, Mr. Worden. First of all, I want to indicate for the record that I think that, on the whole, your statement is a positive statement which I know the committee appreciates.

As a spokesman for General Motors, you make it clear that the corporation supports in principle most of the objectives of this legislation, if not the details.

You have not just opposed certain provisions. You have advanced some positive alternatives, and I am sure that those are going to be useful to the committee in its deliberations.

In connection with your proposed rating system which would compare the damageability of various makes of cars, based on the actual claims statistics rather than the testing system suggested in the legislation, it occurs to me that it might be more likely to reduce insurance premiums since the statistics would be similar to those actually used by insurance companies to determine their rates.

In other words, that the consumer would be better off. Is that your contention?

Mr. WORDEN. Yes, sir.

Senator GRIFFIN. How long do you think it would take to put a system such as you propose into effect?

Mr. WORDEN. Sir, that would be pure guesswork on my part. As I suggested in the statement, all of the details have not been worked out. We believe it would be feasible and if the chairman would like, we will get, this afternoon if possible, or set a date to get with your committee to work out the details of such a system.

And it would be pure guesswork on my part, but this requires the submission of all the information from the various sources, basically insurance companies, of the type of information that is required.

I would not care to guess, but it would seem to me that somewhere in the neighborhood of 12 to 18 months, or 2 years, a system could be operable, such as that proposed.

Senator GRIFFIN. Now I know that the majority counsel, Mr. Sutcliffe, has some questions to ask on behalf of Senator Hart and others, but before I turn to him, I wonder if the distinguished Senator from Alaska has any questions?

Senator STEVENS. Yes; I am sorry to come in late. I am interested in the concept of this predistribution testing, and what relationship it has to availability of jobs.

Have you made any study of that in terms of section 126? How much delay would there be built into production, and how many people would be put out of work for how long if we went into this kind of a testing?

Mr. WORDEN. Sir, I hate to answer a question by asking one, but it would all depend upon how much testing was required by the Secretary.

As it is in the bill, it's at 5, 10, and 15 miles per hour. But if he moved completely around the car, the two front corners, two rear corners, and at various impact stages, and then if you had to go to each make and model within the General Motors line, for instance, or within the industry where there are some 345 different domestic makes, and 200 foreign makes, or some 545 different cars, and then if I had to go in and add the options which require different repairability—you are moving into a multitude of testing that there just would be an inadequate amount of time.

And all the time that you are doing this testing, your production lines are presumably running, you know, during this particular time, and people are at work.

Contrary to that, if you were to fully meet what—and maybe this is not the total intent of the bill—but if you were to meet the requirements as we interpret the intent of the bill, you would have to run your production lines to get enough production models to run tests and have these tests concluded in an adequate time in order to have all of this information into the field and in the dealers' hands before you could announce your new product or allow the dealers to announce the new product—before you can even distribute the new product to the dealers.

Senator STEVENS. Has that been analyzed at all in terms of if you had to do that?

Mr. WORDEN. Not in that great a detail; no, sir. We believe it an unmanageable proposal, and that is the reason we tried to come forward with what we believe to be a positive alternative proposal.

Senator STEVENS. Maybe I am showing my ignorance on this subject, but isn't it possible to develop a modular system of tests for an existing model and then test the additions to each subsequent model without having to test each model each year for each provision, for each speed?

Mr. WORDEN. Sir, I am not a mathematician. I have an engineer right here. But I am confident this could be done, and having read some of the previous testimony, of the representative from the Cornell Aeronautical Institute, they have proposed that a mathematical modeling concept might well be applied where this could be done.

But again, we are speaking of duplicating impact tests, car to car impact tests, on a simulated basis, rather than the real life world situation that actually occurs. We believe the real life world situation and the data that would be accumulated on which ratings would be based, would be more realistic and in the long run be of much greater benefit to the consumer.

Senator STEVENS. Thank you very much. Thank you, Mr. Chairman.

Senator GRIFFIN. It would mean more in terms of insurance rates?

Mr. WORDEN. Yes, sir. Not more costs, sir.

Senator GRIFFIN. That's right, but it would mean more to the insurance companies in terms of determining insurance rates.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Thank you, Senator Griffin. Mr. Worden, you referred to Mr. Miller's experimental work at Cornell Aeronautics Laboratories, where they have had initial success in developing a computer model to depict vehicle defamination at different impact speeds.

If this type of rating were possible, a rating not requiring the crash testing of individual vehicles but one based upon a computer model, would this reduce considerably the problems you have with the testing of production models?

Mr. WORDEN. I would think so; yes, sir.

Mr. SUTCLIFFE. So that the requirement of the bill which asks the Secretary to come up with reasonable test methods might include test methods along the lines of a computer model that wouldn't necessitate the bending up of a lot of sheet metal?

Mr. WORDEN. So long, sir, as the bill says production models. As you know, you have pilot line models and then you have production

models. We are building the cars. These are the cars that are going to be shipped to dealers, which are going to be sold to the public.

This is the delay factor that is involved. Now if there could be a step at some point and if the modeling and the testing mathematically could be computed early enough, like you take the first sample—and I'll put in a commercial—take the first Impala Chevrolet right off the line, and that could be tested and then through mathematics and applied to all Chevrolets. Then it would not interfere, in my judgment, with the proposal in S. 976.

Mr. SUTCLIFFE. Are you suggesting that perhaps the Secretary be given discretion as to whether the tests should apply to the pilot line models or production vehicles?

Mr. WORDEN. Yes, sir.

Mr. SUTCLIFFE. Thank you.

In your testimony, you say, "Thus, while we support the rating of vehicles on the basis of damage susceptibility and subsequent repair costs, this could offset the cost savings objectives of the bill."

Now by this do you mean that it is possible that bumpers would cost more than the resulting savings from insurance premium reductions?

Mr. WORDEN. What we are referring to in dealing with damage susceptibility and subsequent repair costs that could offset the cost savings objectives of the bill, is not just bumpers alone. It is anything that is added as a component to the benefit of the consumer that might be completely hidden.

For example, we might add a side door guard beam, as we did within the General Motors product line. It is completely hidden. You can't see it. It provides additional protection. It adds, certainly, if the car were to be crashed in the side, it protects the occupants on the inside of the car from protrusion, because the beam helps limit the protrusion into the vehicle.

It adds cost to the vehicle, but as far as looking at the overall rating, you know, you might not get any benefit for having that side guard beam in there.

Yet it's definitely to the benefit of the buyer and user of that product to have it there for his protection.

Mr. SUTCLIFFE. That goes to the point of the need to coordinate safety provisions with property damage.

Mr. WORDEN. Yes, sir.

Mr. SUTCLIFFE. The provisions in S. 976 which ask for the development of a rating as to property damage susceptibility and injury index would be able to reflect both the safety factor of the vehicle and the property loss reduction factor of the vehicle as to insurance premiums, would they not?

In other words, isn't the bill already directed toward the coordination of those criteria?

Mr. WORDEN. I think what I am saying when I refer to sections 1 through 4 is purely a strong, strong support of the Safety Act and the occupant protection. We are not arguing with the property damage additions in 5 through 14. We think that when you put property loss in 1 through 4, you are equating the bending of a piece of metal with some kind of damage to a human body. We do not believe that to be correct.

Mr. SUTCLIFFE. As to the cost benefit of providing property protection, has General Motors done a cost benefit analysis of the impact

speed, the cost of the bumper, and the premium reduction resulting from those various impact speeds on the cost, and premium savings?

Mr. WORDEN. Well, sir; I feel rather confident that General Motors has tested the vehicles in this regard. Now whether or not these have been turned into internal cost factors, you know, I am sure this likewise has been done, as they affect General Motors costs and as they possibly might reflect in the ultimate cost to the consumer.

But General Motors interest has to be, as in the interest of any automotive manufacturer, or any manufacturer, for that matter, the ultimate cost to the consumer.

Mr. SUTCLIFFE. Could you present the findings that have been made as to where the cost benefit lies in the production bumpers?

Mr. WORDEN. I think that we could, making certain assumptions on impact; if you would allow us to make certain assumptions, we could present to you a chart that would show you the reasonableness of the various speeds of impact.

Mr. SUTCLIFFE. I am simply asking for the record to have available those, with an explanation of the assumptions that are made.

Mr. WORDEN. I will be more than happy to check with Detroit to see if that can be supplied to you, sir.

(The following information was subsequently received for the record:)

The primary function of bumper systems is to provide protection during low-speed collisions for body components, lamps, sheet metal, internal mechanical components and structural components. Secondly, the bumper systems should be integrated into the vehicle so as to not detract from the ride, handling performance or parking ability of the vehicle and to coordinate with appearance in terms of marketing potential.

Accordingly, General Motors has undertaken extensive studies to ascertain where the "cost benefit" lies in providing improved crash damage protection with redesigned bumper systems.

These studies included evaluation of alternative designs, levels of impact speeds, frequency of low-speed collisions, the cost of new bumper systems and possible consumer benefits. Early in our studies it was recognized that increased consumer benefits were of primary importance. Since the safety of the occupants is not involved at the low impact speeds being discussed, it is essential to provide some economic return to the consumer for any increased cost outlay due to new bumper systems.

To assist in evaluating different possible bumper systems, their relative estimated prices to the consumer were charted (Chart 1). This chart is not related specifically to design cost, total cost, dealer price or consumer price; it only shows that the relationships of the three speed levels of bumper protection on the chart to each other remain constant regardless of what value level is studied in relation to consumer benefit.

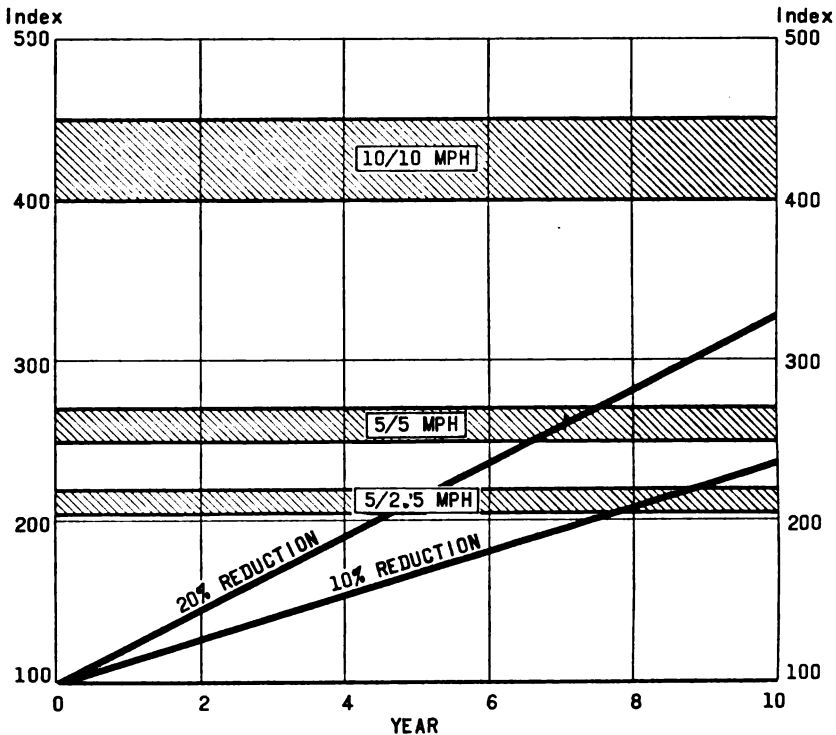
Also, the values indicated for the three levels of bumper protection are independent of the consumer cost of current bumper systems.

The estimated price to the consumer of three different levels of bumper protection is compared to existing bumper protection in terms of index values. The index value comparison is not the same as a percentage comparison, as will be indicated. The index assigned is used only to compare the relative difference between proposed systems.

The 100 index base level represents the estimated consumer price for the existing protection level front and rear. The index value, or implied dollar value, below the 100 index line could represent any value, large or small. It is simply a departure point, with no implied value, to mark the present level of bumper protection, which has no identifiable price to the consumer.

CHART 1

# INITIAL PRICE TO CONSUMER VS. CUMULATIVE POTENTIAL SAVINGS



The term "price to the consumer," as it applies to Chart 1, is an estimated statistical value. A statistical "price to the consumer" is needed to evaluate properly the various bumper systems under investigation. A given feature or system such as a bumper system, is not available to the consumer as an item—nor is it priced separately—because it is integrated into the vehicle. Moreover, the price of the total vehicle must meet the test of a competitive market.

The estimated initial "price to the consumer" we have cited are average ranges and there is a variance in prices related to variances in design. Moreover, we find that the price of some smaller car system designs would often tend to be higher than those for some bigger cars because of vehicle structure. Thus, the greatest economic burden may be placed disproportionately on the segment of car purchasers who generally could least afford to pay.

Moving up the chart, the first band reflects the estimated differential for a 5/2.5 mph system over the existing system.

The next band up represents a 5/5 system, with an estimated price to the consumer that is about 50 index points higher than the 5/2.5 mph bumper system.

And, finally, the top band shows that the consumer would pay more than twice as much for 10/10 mph protection as for the basic 5/2.5 mph capability.

It should not be inferred that the estimated initial price to the consumer of the 5/2.5 mph bumper system would be slightly over twice that of the existing bumper protection indicated by the 100 index line. The 100 index is not measurable in any relative dollar value, as existing bumper protection is integrated into the total price of current GM production cars.

## EFFECT OF INSURANCE REDUCTIONS

The added cost for the improved bumper protection indicated in Chart 1 would be partly offset by lower repair costs and proposed reductions in insurance premiums. Liberty Mutual has indicated a 10% collision premium reduction would be available for cars which can withstand a 5 mph front and rear barrier test with no damage. Allstate has offered a 20% reduction for a system which provides a similar capability. Allstate has said that it will accept that 5/2.5 bumper system that meets 1973 federal standards as a basis for 10% rather than 20% reductions. However, if the 5/2.5 bumper system were accepted as the basis for 20% reductions, the following results might be achieved:

At a 10% reduction in premiums together with the estimated deductible savings, the 5/2.5 system would show a net cumulative potential savings to the consumer sometime after the end of the eighth year, or close to the end of the life of the average car. With only a 10% reduction in premiums, the consumer could not realize any savings with any system more costly than the 5/2.5 system within the average car life.

With a 20% reduction in premiums, the consumer would realize net cumulative potential savings, relative to the initial price sometime during the fifth year with the 5/2.5 system. This would occur sometime during the seventh year with the 5/5 system.

The cost of the 10/10 system would never be recovered during the life of the car at these percentage reductions in premiums. And it is obvious that a person who purchases a new car every year or two would recover only a small part of his added cost for any of the above systems.

Also, it should be noted that most car owners drop their collision coverage after about six or seven years. Therefore, the savings indicated beyond this point would not actually benefit all consumers.

Additionally, only about 50-60% of all car owners insure their vehicles for collision damage. Also, the insurance industry has only indicated reductions in collision premiums and not for property damage premiums. Therefore, a large number of owners would not benefit from reduced insurance premiums.

## STUDY OF REAR PROTECTION LEVEL

We have indicated that there would be a sharply progressive increase in price to the consumer as bumper protection moves up from the existing level of bumper protection to 5/2.5, 5/5 and 10/10 mph front-rear.

Because of this, we endeavored to evaluate in our cost benefit studies the most economical level of bumper protection in the interest of the consumer.

## STUDY OF REAR PROTECTION

We examined insurance and engineering test data in an effort to identify the optimum level of cost benefit to the consumer, and, on the basis of these studies, we believe that it is more beneficial to the consumer to emphasize front-end bumper protection and provide for a slightly lower level of rear bumper protection.

This judgment is based on an extensive review of accident frequency factors shown in insurance claim data and evaluating associated cost trade-offs. As part of our study of this matter, we have made a detailed analysis of 17,000 cases in the Motors Insurance Corporation physical damage accident data file at our Safety Research and Development Laboratory.

The MIC data is the best available, to our knowledge, in the evaluation of automobile accident crash damage. The MIC data has been related to barrier impact speed, which is essential for the evaluation of cost benefits. We do not know of any other insurance industry data which has been similarly correlated.

The MIC data is related to impact speed in the following manner. When an MIC claim involves personal injury, the MIC adjuster is required to prepare a lengthy report of the accident details and submit color photographs. The damage described in the accident report is compared with damage experienced in Proving Ground full scale barrier tests. On this basis, an estimate is made of *equivalent* barrier speed. The comparison considers not only the repair cost but the characteristics and extent of metal deformation.

This makes it possible to establish a mathematical relationship between equivalent barrier speed and repair cost. This relationship is then used to assign an equivalent barrier speed to each reported MIC insured loss.

## FREQUENCY OF ACCIDENT DISTRIBUTION

Our analysis of the MIC data shows that the front area of the car (from the A-pillars forward) is involved in accidents 58% of the time and the rear only 30% (Chart 2).

We then examined the MIC physical damage data to ascertain what could be gained from a practical, improved bumper system that could be made available at a price to the consumer in proportion to the potential benefits.

CHART 2.—ACCIDENT DAMAGE DISTRIBUTION

	Damaged area—Frequency		
	Front (percent)	Rear (percent)	Total (percent)
Distribution of MIC claims:			
Total sample with existing bumpers.....	58	30	88
Revised sample with improved bumper protection.....	35	14	49

This analysis showed that such a bumper system would have reduced the damage in 35% of the claims involving front-end collisions, and in rear-end damage in about 14% of the claims. Most significantly, on the basis of this MIC analysis, bumper-involved front-end crash damage occurs  $2\frac{1}{2}$  times more frequently than rear-end damage.

MIC does not insure for property damage liability, which is the coverage for damage to other than the insured's own car. Therefore, this type of claim is not reflected in the actual MIC data used in the analysis to ascertain the distribution of impacts.

Collision coverage includes payment of any legitimate claim that is made with respect to a damaged, insured car regardless of whether it struck another object or was struck by something else.

The MIC policyholder is entitled to make a claim anytime he is involved in an accident, with the expectation that any claim against the party at fault (third party) will be handled by his collision carrier. Last year MIC recovered 14.5% of their paid collision claim dollars by subrogation proceedings against third parties (people who struck MIC-insured cars).

The MIC data, showing 35% front-end involvement and 14% rear-end involvement, clearly suggest that, in terms of *actual* repair and replacement, the front end of the car requires greater protection than the rear end. We are not alone in this contention (Chart 3).

## CONFIRMING STUDIES

A 1970 study by Cornell Aeronautical Laboratory for the then National Highway Safety Bureau comes to a similar conclusion. The Cornell report showed that front impacts occur in about 67% of all accidents, while rear impacts occur in about 10% of all accidents. Cornell said that even adding rear quarter panel damage incidents increased total rear impacts in their study only to 20%.

Interestingly, in an address by Douglas Toms, administrator of the NHTSB, to the 1970 symposium of the Insurance Institute for Highway Safety, he said: "This is our breakdown where crashes are occurring on the car: 67% in the front, 16% in the rear."

CHART 3.—FRONT VS. REAR IMPACT

	Front (percent)	Rear (percent)
MIC data.....	35	14
Cornell data.....	67	10
NHTSB data.....	67	16

A 1967 Denver Police Department study of 28,830 accidents in a four-county area showed a ratio of 2.1 front impacts to 1.0 rear impacts. This independent study included all passenger cars which impacted another car or object and suffered in excess of \$100 damage.

The accidents least likely to be reported—single car, off-the-road accidents—were also the most likely to involve front ends. The Denver study is completely

independent of insurance data and would appear to confirm the fact that front-to-rear accident ratio exceeds two to one.

Our own production of replacement units for certain front and rear end so-called crash parts also supports the MIC data.

We were asked by the Senate Judiciary Subcommittee on Antitrust and Monopoly in October, 1969, to report on production of six different replacement parts for our 10 best-selling makes and models. The subcommittee asked us to indicate the number of front left and right fenders, hoods, left and right quarter panels and trunk deck lids produced for model year 1969 for sale as replacement parts. We were asked to compare these to the total number of each make and model actually produced.

Our response showed that replacement part production ranged from a high of 5.6% of total production for one front-end part to a low of 1.7% for one rear-end part.

#### PERCENTAGE OF ACCIDENT INVOLVEMENT

National Safety Council statistics show that about 20% of all passenger cars are involved in accidents each year, and MIC insurance claims demonstrate that the majority of these occur at very low speeds. Also, the 20% reported by the National Safety Council includes all types of impacts—front, rear and side.

As noted previously in Chart 2, the improved bumper systems would affect half of MIC's accident claims. The remaining claims would improve impacts in other areas of the care not affected by improved bumper systems.

Therefore, it could be assumed that the National Safety Council's estimate of approximately 20% of all passenger cars being involved in accidents each year would be reduced by half through improved bumper protection.

On this basis, the owners of only 10% of the total car population would benefit from improved bumper protection. This is because that, of the remaining car population, the National Safety Council indicates that 80% are not involved in accidents in any given year. The final 10%, as the MIC data suggests, would be involved in impacts which would not be affected by the improved bumper systems.

**Mr. SUTCLIFFE.** In your testimony, you mention that your 1973 cars surpass the Department of Transportation safety related bumper requirements. In what particulars will your 1973 models surpass that requirement?

**Mr. WORDEN.** May I ask Mr. Doidge to answer that question?

**Mr. DOIDGE.** Most of them will exceed, as we said, and for example, our bumpers are designed to give no sheet metal damage to the car at the 5-mile-an-hour front and 2½-mile-per-hour rear barrier.

The safety law says just safety related items like head lights, fuel systems and all, so we have moved into the damageability part of the thing, unrelated to safety.

In some other areas such as cornering and things like that, we established our corporate position long before there were any safety standards, in response to the things that have gone on.

Does that answer that satisfactorily?

**Mr. SUTCLIFFE.** In other words, they will relate to the property damage aspects as well as the safety aspects?

**Mr. DOIDGE.** Yes, which we think both are important, of course. And that is why we decided to do it, much before the legislation or the direction.

**Mr. SUTCLIFFE.** Thank you very much.

**Senator GRIFFIN.** Anything further, Mr. Stevens?

**Senator STEVENS.** No.

**Senator GRIFFITH.** Mr. Worden, I want to thank you and your associates for presenting the testimony. We appreciate it very much.

**Mr. WORDEN.** Thank you very much.

(The following information was subsequently received for the record:)

## ATTACHMENT A

The amendment seeks to outlaw tampering with original equipment odometers by making it unlawful to advertise, sell, use or install any device which can cause the odometer to register any other than the true mileage driven. It also outlaws altering, resetting or disconnection of odometers or conspiring with others with the intent to reduce the number of miles indicated thereon, as well as operation of a vehicle with the odometer disconnected.

The amendment properly recognizes that the "true" mileage driven is that "registered by the odometer within the manufacturer's designed tolerance." This tolerance is necessary, since conditions which normally change from day to day and from owner to owner, such as air pressure, tire size, amount of tread wear, etc., will in small degree vary the accuracy of an odometer reading.

Actually, passenger cars are equipped with odometers which have a design tolerance of  $\pm 3.75\%$ . Light and heavy truck odometers are designed, in many cases, to even less tolerance in order to offset for additional variables in commercial operation, such as more tire sizes and rear axle options, which would otherwise vary accuracy beyond the minimal tolerance range.

Consistent with the above and in the interest of technical corrections, we would suggest the following amendments:

Page 1, Line 6. Delete "an accurate reflection of" and "actually."

Page 1, Line 7. Delete "an accurate indication of."

Page 2, Line 16. Delete "actual" and insert "within the manufacturer's design tolerance" after the word "distance".

## ATTACHMENT B

These comments are offered in response to the amendment to S. 976 which would require emission inspection of light-duty motor vehicles at least once per year.

General Motors supports the intent of this amendment to S. 976. We have continuously supported the need for annual inspection for motor vehicles as an effective and inexpensive means of assuring the optimum level of emission control for vehicles in use. Tests by General Motors in Southern California indicated that average levels of hydrocarbon and carbon monoxide from vehicles in use could be reduced by 10 percent and 16 percent, respectively, as a result of an effective inspection and adjustment program.<sup>1</sup>

However, although we agree with the intent of the amendment, certain provisions appear to add unnecessary complication and create the possibility of owner dissatisfaction with the program.

A. Section 15(2)(A) requires an annual inspection of light-duty motors vehicles, as well as an inspection at time of transfer of title for purposes other than resale, and after an accident if the emission control systems were damaged. It would seem that an annual inspection should suffice. As pointed out earlier in our response to S. 976, it would avoid duplicate tests within a period of a few months. The effect on the atmosphere of additional inspections at time of transfer, or after vehicle damage, would not be justified in light of the inconvenience and confusion this would cause.

B. Section 15(b) requires that vehicles manufactured prior to model year 1972 be tuned to perform with specifications established in consultation with the Administrator of EPA.

Section 15(c) however, specifies that the emission standards for 1972 and subsequent model year vehicles in use "shall be the same as the standards established under the authority of Section 202 of the Clean Air Act" for new vehicle certification. We believe that the technically complicated job of the determination of field standards for 1972 and subsequent model vehicles should, as provided in the 1970 Clean Air Act, be left to the discretion of the Administrator of the Environmental Protection Agency. Setting such standards by legislative edict is inconsistent with the provisions of the 1970 Clean Air Act just passed by the Congress. A discussion of the setting of these standards is included in a March 12, 1971, document titled, "General Motors Progress and Programs in Automotive Emission Control," pages 75 through 80, previously submitted to the Administrator of the Environmental Protection Agency. This document is included herein by reference.

<sup>1</sup> "Tune-Up Inspection, a Continuing Emission Control," SAE paper 690141.

To summarize, cars in use cannot be expected to perform to the same levels of emission control efficiency as cars tested under proving ground conditions.

Certification vehicles, for example, are operated continuously and accumulate 50,000 miles of operation in approximately four months, using high quality, commercially-available fuels and lubricants.

In actual use, very few cars will experience this same kind of rapid mileage accumulation. Many see only occasional use. Stop-and-go operation with frequent cold starts will increase the chances for dirt and gum accumulation, engine rusting, oil dilution, PCV plugging, spark plug fouling, stuck chokes, poor piston ring seating, exhaust valve leakage, etc. Regular maintenance can minimize the effects of these variables, but may not be totally effective in bringing the emission levels back to the new car condition.

It simply is not possible to simulate the aging, eroding and deteriorating effects of time with a rapid mileage accumulation schedule, and it will be many years after our control systems are actually installed in cars before we have enough valid, long-mileage data on which to make accurate projections of what may be expected of future vehicles in actual customer service.

Under controlled conditions of a proving ground certification program, maintenance is provided on a regular basis, using General Motors replacement parts. Proper maintenance is a vital requirement for satisfactory field performance of emission control equipment as well. However, conditions are not well controlled in the field, and lack of maintenance or improper maintenance and adjustment are common. For example, in a field survey of 152 1970 model General Motors vehicles which exceeded certification levels at mileages of over 4000 miles, 92 percent of the failures were due to rich idle, low idle speed, advanced spark timing or rich choke operation—all items included in any maintenance program.

Furthermore, we feel it will be extremely difficult to diagnose the cause for high emissions from the results of a simple emission measurement as suggested by the amendment. This problem can result in considerable inconvenience and expense to the vehicle owner.

#### RECOMMENDATIONS

As an alternate to the proposed amendment, we recommend the following course of action for field emission inspections:

1. In the absence of accurate methods and procedures for measuring emissions from vehicles in use, an annual inspection should be required for all cars. Inspection would consist of a test and adjustment of the engine operating parameters, and inspection for proper installation of emission control devices, if so equipped.

2. When adequate methods and procedures for measuring emissions for vehicles in use are prescribed, the maximum emission levels for each pollutant should be selected, or the test procedure should be adjusted, to allow for reasonable deterioration in use. A specific recommendation is contained in our March 12 submission to EPA noted earlier.

Senator GRIFFIN. Now the committee will be glad to hear from Sydney L. Terry, vice president of Chrysler Corp. Mr. Terry, we are glad to have you. I would appreciate it if you would introduce your associate and proceed in any way you wish.

#### **STATEMENT OF SYDNEY L. TERRY, VICE PRESIDENT, SAFETY AND EMISSIONS, CHRYSLER CORP.; ACCOMPANIED BY VICTOR TOMLINSON, LEGAL STAFF**

Mr. TERRY. I have with me Victor Tomlinson of our legal staff.

My name is Sydney L. Terry. I am vice president, safety and emissions for Chrysler Corp. I welcome this opportunity to present Chrysler's views on amendments to the National Traffic and Motor Vehicle Safety Act as proposed by S. 976.

We have carefully reviewed and analyzed this proposal and are favorably impressed with its stated goals and objectives. We commend the bill's sponsors for seeking to alleviate some of the problems associated with motor vehicle use and ownership today.

I do not think it appropriate to discuss specific language of the bill. However, I wish to make some general and, I believe, more important observations about the bill as they pertain to the consumer, the motor vehicle manufacturer, and Chrysler in particular.

Let me say at the outset that we at Chrysler believe that the free marketplace is the consumer's best friend. We are confident that the forces generated by competition among car manufacturers for the consumer dollar are by far the most effective means of attaining the stated objectives of this bill. We accept the concept of competition as a means of producing cars less vulnerable to damage.

We are willing to take our chances with public disclosure of comparative automobile insurance and repair costs. We agree with the general concept of mandatory inspection following vehicle accident repairs and ownership change.

And, we support in total this bill's efforts to bring the States into conformity with registration and titling provisions of the Uniform Vehicle Code and Model Traffic Ordinance.

One of the problems this bill seeks to solve is the matter of increasing auto insurance and accident repair costs. This problem also deeply concerns us because it adversely affects the buyers and users of our cars. But we are confident that competition among motor vehicle manufacturers to produce cars less vulnerable to damage would result in lower repair costs to the consumer.

This, of course, is the stated objective of the bill. However, we seriously question the matter which the bill sets forth to encourage such competition.

The bill proposes to encourage competition by regulation. We think this approach is ill-advised and contrary to the public interest. Setting new car property loss reduction standards will not promote competition; rather it will more likely stifle and inhibit competition. Further, we question the feasibility of these proposed requirements.

As to the procedures for determining "susceptibility to damage," it is our opinion that there is likely to be little resemblance between the artificial, standardized, and controlled testing methods to be used by the manufacturer at his proving grounds and run by skilled technicians—a resemblance between that and what happens in the real life situation.

We feel that any repair cost estimate resulting from a prescribed proving ground collision would have no practical connection with a "bump" shop estimate for making repairs following an actual "on street" accident.

Nor would manufacturer repair cost estimates reflect the relative susceptibility of cars to damage resulting from collisions between the various makes and models of one manufacturer, between the various makes and models of competing manufacturers, or between the untold accident combinations that inevitably occur within the total vehicle population across the Nation.

Further, we believe it would be completely impractical to conduct tests on every make and model car, obtain cost estimates of repairs, translate this data into meaningful information, and have it available to the consumer at model introduction time.

It is conceivable that these provisions could require hundreds—perhaps thousands—of tests. For example, Chrysler advertised some 139

car models this year, down from 156 last year. The downward trend is likely to continue in future years.

Nevertheless, considering all combinations of trim, engine, color, equipment options, we could run any one of our assembly plants for more than a year without ever building exactly the same car twice.

Of course, many of these combinations would have no bearing on repair costs, but at the same time, many would.

In view of the possible quantitative aspects of these requirements alone, there simply would not be enough leadtime between the beginning of production and dealer introduction of new vehicles. At Chrysler, our operations are geared to make necessary model change switchovers at our assembly plants beginning in about the middle of July. This process may take several weeks at any given plant before actual production is begun.

Frankly, we have just about all we can do to produce enough cars to fill the pipeline to our dealerships by new car introduction date in early fall. It is during this same period, presumably, that the various tests proposed would need to be conducted. It is also during this same period that the data derived from such tests would need be collected, translated into meaningful information for the consumer and made available to dealers for dissemination to prospective customers at new model introduction time. We feel that this would be a highly impractical task. Moreover, the cost implications for meeting this requirement could be tremendous.

Aside from the matter of leadtime and costs for these tests, there are many situations well known to engineers and designers in which improved serviceability, easier maintenance, or less expensive repairs can be achieved through car design. But most can be achieved only by increasing the cost—the basic cost—of the product.

This means that the effort to reduce consumer repair costs by setting property loss reduction standards would almost inevitably result in increased costs and prices for new cars. But it is well recognized that car design is but one of many factors contributing to rising insurance and repair costs. We at Chrysler do not know just how much of a factor design plays in these rising costs and we regret that we have been unable to obtain such information from any source.

Nevertheless, this matter of increasing vehicle costs is of serious concern to us. We are apprehensive, to say the least, as to how and where will the line be drawn. We fear a continuation of this cost trend may once again make the automobile a luxury most people cannot afford.

You can argue that regulations for safety and emissions are justified—in the case of emissions by the health and environmental benefits to the third parties or the community as a whole; and in the safety area by the savings of lives and reductions in injuries.

But when the reasons for promulgating standards are purely economic—as in the case of auto repair costs—it appears to us no such argument can be made.

No administrator, no matter what insight he may possess, can ever be expected to improve on the forces of the free marketplace in determining the proper balance between higher initial car costs to the buyer versus lower potential repair costs after an accident.

We note that there is language in the bill calling for compliance with specific front and rear barrier tests of bumper systems after January 1, 1975. The bumper situation is a good example of the forces of the marketplace at work. We at Chrysler certainly recognize the potential advantage afforded to the manufacturer whose vehicles are eligible for lower collision insurance rates and which are less costly to repair.

Most importantly, we recognize that there not only is room for improving car bumpers but that the public is demanding that it be done. And, we are doing something about it.

We as well as other manufacturers have publicly stated on numerous occasions in recent months that 1973 model year vehicles will be provided with significantly improved bumper systems.

Further, a ruling of the National Highway Traffic Safety Administration issued on April 14, 1971, requires both domestic and import vehicles to comply with prescribed bumper safety standards beginning with the 1973 model year, and at Chrysler we fully intend to comply with these standards with bumper systems which will prevent damage to the vehicle.

For the 1974 model year, the ruling prescribed additional requirements including provisions for achieving greater uniformity in bumper heights and bumper configurations which go far beyond the provisions of this bill.

These developments will result in significant and progressively greater resistance of vehicles to damage in these low-speed collisions. And, they are being accomplished without the promulgation of property loss reduction standards.

We note that the recent publication of bumper standards by the National Highway Traffic Safety Administration raises a question which could become a real problem should individual States enact bumper laws which are different from the Federal requirements. In this regard, we strongly feel that Federal preemption is needed for both purposes of uniformity as well as to provide some limitation on State activity in new areas of Federal activity such as this bill would authorize.

Chrysler supports the concept of public disclosure of meaningful information on vehicle susceptibility to damage. We expressed a similar view here in Washington over a year ago during an informal rulemaking hearing on exterior bumper protection before the Federal safety agency.

At that time, we advanced the idea of requiring consumer information that would indicate—on a uniform basis—the degree of exterior protection afforded by bumpers on various makes and models of cars. Most importantly, we believe that this is the best means of spurring competition among car manufacturers to design and produce cars that are even more resistant to damage than those currently contemplated.

Toward this end, we believe that this can best be accomplished by requiring the Secretary to collect and publish information on the actual cost of accident repairs by make, model, and year of manufacture for all kinds of vehicles in use in this country. Moreover, we believe that data of this nature already exists within insurance company claim closure records, although it might not be in the form we would need it to collect it and make it meaningful.

Therefore, it would appear to be appropriate for this bill to prescribe for the development and promulgation of regulations governing the manner and form by which all companies engaged in the business of selling or underwriting car insurance would be required to collect and submit accident loss experience information to the Secretary on a periodic basis.

Within the States, insurance companies already are required to justify insurance rates on the basis of actual loss experience. If there is need for testing of production cars to supplement loss experience for rate justification, it seems to us that the burden of such testing should rest with the insurance industry.

We understand that action along these lines already has begun as evidenced by repair cost studies of the Insurance Institute for Highway Safety and Liberty Mutual, as well as the Nationwide Mutual study of "muscle" cars versus "standard" vehicles. This latter study was used by the Insurance Rating Board to justify a substantial surcharge on insurance rates for high performance cars.

This is not to say that the data that has been presented by the insurance industry on these studies is useful or meaningful for consumer comparative purposes. On the contrary, one company clearly indicated that the purpose of its study was to provide a reasonable basis for rating purposes and that it "was not intended, nor is it suitable, for use either to endorse or censure the product line of any automobile manufacturer."

We believe that much work must be done to find appropriate methods that can be applied fairly and uniformly to yield data that is useful for comparative purposes. Moreover, any disclosure information that compares susceptibility to damage of various makes and models between manufacturers must be based on highly reliable and dependable data. Failure to do so could have severe economic consequences upon individual manufacturers, and we feel undesirably and unjustifiably so.

Using actual claim loss experience would have a decided advantage over the provisions in the bill because it would benefit a much wider range of consumers by providing meaningful information on all types of motor vehicles—older cars as well as current models.

And the need is apparent when one considers that there are about two used car sales in this country for every new car sold. Moreover, this approach also would reveal the data being used by the insurance companies to justify and establish insurance rates.

With this kind of information, the buying public would be afforded repair cost comparisons based on real crashes and actual experience. If claims data is collected in a uniform manner, submitted in proper form, categorized so that valid comparisons can be made, and published, the marketplace will have information it now lacks on both the performance of insurance underwriters and on the automobile manufacturers.

Consumers will have freedom of choice to select vehicles suiting their own best interests. Should significant differences in repair costs appear between competing makes in the same price class, manufacturers would leave no stones unturned until they found out the reasons why.

Companies producing cars costing less to repair would undoubtedly advertise and promote this advantage. Others would be striving to

correct repairability problems in future car designs. By this approach, then, the purposes of this bill could be and would then be achieved.

We believe that the provision for supplying consumer information in a simplified and easily understandable form cannot be overstated. There is, of course, a large variety of vehicle makes and models in use today. If one considers these along with the combinations of trim and equipment options influencing repair costs, we fear the resulting compendium of information would be so voluminous as to be worthless to the average consumer.

Thus, it may be necessary to use typical or representative comparisons based on valid statistical data and qualified as to its limitations.

Now, I would like to turn to the personal safety aspects of this bill, those dealing with the development of comparative information on vehicles regarding risk of injury or death.

We have no objection to the Secretary undertaking a study of the feasibility of developing tests and testing procedures designed to allow a determination and comparison of the risk of personal injury or death to passenger car occupants.

However, we note that the bill would allow the Secretary to declare tests and test procedures as "feasible." In our judgment, this term is far too vague and represents an extremely poor measure of reasonableness or practicality when applied to tests or test procedures.

Any measures along these lines must be fair and equitable to all manufacturers for the range and types of accidents that the vehicles could likely encounter as well as for all classes of vehicles. We urge the committee to consider revising these provisions to include some fair test of reasonableness, practicality, and cost effectiveness of tests and test procedures before they are promulgated to be applied to every new passenger vehicle sold in this country.

Another provision of this bill would require automobile dealers to provide comparative data to prospective buyers regarding insurance costs on various makes and models of cars having different occupant injury severity or vehicle property damage characteristics.

Again, we accept the idea of public disclosure of comparative data providing it is valid and meaningful. We also concur with its dissemination by auto dealers. We feel that this information should be published and made available to dealers by the Secretary. We also feel that much of the information would be applicable to prospective used car buyers as well as those contemplating buying a new car.

Chrysler is in general agreement with the proposed amendment to highway safety program standard No. 1 regarding additional State motor vehicle inspection programs. However, we have several suggestions to make which we feel would improve these programs.

We suggest that the committee consider changing the condition requiring inspection upon title transfer to one requiring inspection upon registering of the vehicle. We wish to point out that merely a change of title does not necessarily require that a vehicle be in a safe operating condition. For example, some people today like to purchase older vehicles or less expensive cars and repair or restore them themselves.

In another case, a buyer may plan to use his purchase entirely off-the-street for farm or recreational purposes. In these instances, merely the sale or change in title would not appear to justify the need for inspection to determine the safe operating condition of the vehicle.

However, should these vehicles be used on public streets, they should be certified as to safe operating condition and this could more appropriately be done as a condition of vehicle registration.

We believe it to be the intent of this bill to provide a single vehicle inspection standard applicable to new or used vehicles alike. We support this concept. Moreover, we do not object to requiring inspection of new vehicles.

However, we feel this can best be accomplished by adoption of our earlier suggestion which would require inspection as a prerequisite for registration. Therefore, we suggest that the bill make no distinction between new or used vehicles in this particular provision.

We have some concern that the proposed added inspection conditions when combined with current provisions of the standard could conceivably overload inspection facilities as well as have other ramifications such as shortages in skilled manpower to conduct vehicle inspections.

Along these lines, we feel that the committee might wish to strongly encourage greater use of law enforcement agencies in detecting some of the more obvious type deficiencies and citing owners during onstreet use of these deficient vehicles.

We have all seen these clunkers and know there are ordinances which prohibit their being there, and yet they aren't taken off the road.

If this could be achieved, it would reduce the workload of inspection facilities. In the same vein, it might be more appropriate to permit initiation of these proposed added requirements in stages so as not to overtax the resources of the State concerned.

Initially, for example, new vehicles might be excluded or all vehicles under 2 years of age. Variations of these types already exist in some inspection systems both here and abroad.

Chrysler supports the proposed amendment to highway safety program standard No. 2, concerning State motor vehicle registration and uniform certification of title programs.

In our own vehicle security efforts, we have necessarily worked closely with law enforcement and motor vehicle agencies across the Nation. In the course of this work, we have noted that the lack of uniformity and discipline of common language and terminology in registration procedures among the States has served primarily to the advantage of the car thief.

Closely allied with the need for common terms in registration are uniform titling provisions. Chrysler, along with others, helped develop the Uniform Vehicle Code, and its titling provisions. It is designed to help curtail losses by both buyers and dealers if they inadvertently buy stolen cars or autos with defective titles or undisclosed liens. It also serves as a theft deterrent by providing law enforcement agencies with a legal tool to combat organized car theft.

We understand that eight States still have no certificate of title laws. Yet, statistics show that the ratio of car thefts to vehicle registrations is significantly lower in States with title laws. Additionally, States with title laws appear to have a higher rate of recovery for vehicles stolen.

Most certainly, we consider these registration and titling provisions of this bill a major step in the right direction.

We suggest deleting the punitive provision that would reduce a State's Federal aid highway apportionment should the State fail to implement the programs proposed. Although we recognize the intent of this provision, we feel that such punitive action would not be in the best public interest.

Highway improvements have clearly proved to be "plus" factors in traffic safety. To reduce moneys available to a State for these improvements as punishment for noncompliance with another safety provision hardly seems logical or in the public interest.

We feel that the incentive being offered the States to comply with these requirements through Federal participation in program costs—up to 50 percent—is the proper approach. If States still fail to comply, then we feel that it would be preferable to increase the incentive rather than resort to punitive action.

Finally, we note that this bill calls for motor vehicle safety and property loss reduction standards which require all vehicles manufactured after a given date to be "so designed and constructed as to facilitate motor vehicle inspection, and to facilitate the repairs necessary to meet the requirements of such inspection."

Let me say once again that standards prescribed in this manner can only inhibit progress. For example, once a "standard" is promulgated, say for inspecting brake lining, an innovation in new brake design—one that might require no inspection or replacement in the life of the car—becomes impracticable and well-nigh impossible for an individual manufacturer to introduce simply because it does not conform to the "standard."

With the present and contemplated constraints already being placed upon motor vehicle design and production by both, market demands and Government regulations, it is our candid opinion that these design requirements for inspection would be ill-advised. This is not to say that these types of factors are not or should not be considered in vehicle design. However, so many other factors must be weighed that are more important because of their direct influence on vehicle safety and operation that any effect the proposed requirements would have on future car design would, at best, be negligible and, at worst, could inhibit progress in the development of safer and better cars.

This completes Chrysler Corp.'s formal testimony, Mr. Chairman. I will be happy to respond to any questions you or the other committee members may have. Thank you for your time and attention.

Senator GRIFFIN. Senator Hart, do you have any questions?

Senator HART. Mr. Terry, I apologize to you and to my colleagues, and I will to Mr. Worden, for being absent. I appreciate Senator Griffin's willingness to pinch hit here.

Obviously, I have no questions, having just this minute arrived. Thank you.

Senator GRIFFIN. Senator Stevens?

Senator STEVENS. I have to leave to go to another meeting. I would like to suggest that you have someone submit suggested amendments to take care of those two provisions, one concerning registration concepts, and the other the on-street law enforcement activity.

If you have any suggestions as to how we can reach that, because I think that is a very worthwhile suggestion. The bill presently covers

those vehicles which are going to be transferred and not those vehicles that the original owner is going to drive to death. And it might be in worse shape than the one that someone has gotten ready to sell and gets a good price for.

I would very much like to see that concept in a proposed amendment. Thank you very much, Mr. Chairman.

(The following information was subsequently received for the record:)

According to the information we have, cost is one of the major deterrents to states adopting vehicle inspection programs that do a thorough job. Each time an additional item is required to be inspected, the cost of the program goes up. It seems to us that perhaps one way to attack this problem is to re-examine the equipment which is now subject to inspection and determine if there is some way the number of items to be inspected can be reduced without compromising safety.

Obvious deficiencies are those that a police officer can observe without having to stop the car and perform a street inspection. These include such items as burned out or broken headlights or taillights, dangerous sheet metal hanging from the car, cracked or broken window glass, badly worn tires, noisy vehicles, smoky exhausts, missing engines, and settled or otherwise failed suspensions. We believe that if cars with such obvious visual deficiencies were ticketed on sight, most of the benefits of motor vehicle inspection could be achieved. Moreover, if a vehicle operator could receive a ticket as quickly for driving his car in an unsafe condition as he can for a moving violation, we think few would take the risk.

Ticketing could require that a certificate or receipt indicating correction of the defect be furnished together with the fine, or that a vehicle be inspected at the station after the defect was corrected as a condition to settlement of the violation. Such a law could stand on its own in lieu of motor vehicle inspection. Or, it could be used in conjunction with a periodic motor vehicle inspection system thereby easing the load on inspection facilities.

With regard to overtaxing of inspection facilities, we note that the State of New Jersey recently announced that it will remove all *new* cars from the State's motor vehicle inspection program beginning in July—to decrease waiting time. In lieu of state inspection, new cars will be inspected by dealers who must certify that the vehicles meet safety inspection standards. Dealer certification will be valid for one year and is expected to cover about 400,000 new cars annually.

The transferring of title from one owner to another does not necessarily mean that the new owner is going to use the vehicle on the public streets. A number of cars are bought for other uses such as, restoring historic vehicles, using the vehicle purchased for parts, using the vehicle for a variety of off-road purposes. Also, there are some states that do not have title laws (New York being the most notable example). In those states, inspection could not be required prior to the transfer of title because no such transfer takes place.

Therefore, we feel the requirement for inspection should be at the time the vehicle is registered to a new owner which permits it to be used on the public streets in every state. It should be pointed out that this method may result in over inspection of those vehicles having a number of owners within a one-year period.

#### ODOMETER AMENDMENT

Although Mr. Terry did not comment on the odometer amendment at the time he testified, Chrysler supports the amendment. We believe that the consumer should be provided with the information he needs to make an intelligent purchase of a car. We have long supported this type of legislation in the states.

#### PREEMPTION

Should the Congress decide to legislate property protecting bumpers despite our objections, we definitely would favor preemption of state laws or requirements on the same subject. On the other hand, we would much prefer that the property protecting bumper provision of this Bill be deleted even if this should result in our having to provide special property protecting bumpers to meet individual state laws. This is all the more true since we are confident that, by 1975, competitive pressure of the marketplace will have satisfied public demands in this area.

Senator GRIFFIN. Mr. Terry, like the previous witness, I think you have also presented a positive and constructive statement, one that has a number of useful suggestions that will help the committee, as it gives further consideration to this legislation.

I am interested in the alternative you suggest in your testimony to this elaborate testing of production models before you could actually sell cars—that pending legislation should utilize actual repair costs. As I think about that as an alternative, I have been wondering about how the legislation as drafted would apply to imported automobiles.

I know that your company is at least very much aware of the competition and the problem of imported automobiles. How do you understand—if you do understand—the legislation as drafted? How would it apply to automobiles manufactured in a foreign country?

Mr. TERRY. Well, I think it would be very difficult, to say the least, for the foreign manufacturers to comply with the legislation. But I haven't really thought too much about the problems of the import car manufacturers because we haven't been able to figure out how to do our own job domestically, frankly.

The thing is unmanageable in our view, completely. We talk about—an earlier witness has suggested this—we talk about the time limit we have to do this in, trying to test production vehicles with a number of different tests, because it would be, as we visualize it, at least, 10 tests for each make and model and when you add options such as air conditioning, with and without, that doubles it. And you get into 400 or a thousand tests very quickly.

And it is not just running the tests but it is also having somebody come in or finding some other way of figuring out the cost to repair each one of these accidents, and then getting the information together and sending it to the Secretary. During this time we are building automobiles, in production already, but we have not yet announced them.

Now, these cars can't actually be sold to the public theoretically until the cars are announced. So you see you have an unmanageable inventory situation as the leadtime extends; what happens to the cars during this period? The whole production machinery and the way we do things just doesn't fit with this proposal at all.

Now, on the other hand, we believe that the proof of the pudding is in the eating; in other words, what really happens out there. Now I am sure you gentlemen know a lot more than I, having conducted these hearings, about all the various complications that you get into when you start to try to reduce insurance costs.

There are a great many factors. We at Chrysler—and I am an engineer, a technical man myself, basically—we at Chrysler have been trying to find out by some way or other what part design engineering plays in insurance costs. And the way we would propose to find out would be to get some information.

The only kind of information that would do us any good would be information on cars of a certain make and model year, in accidents that are at least similar. We could then compare those with other cars of the same make and model year in similar kinds of accidents.

But that information we have just not been able to get from any source.

Now, it could be compiled, obviously, and the data is there, and we think if a provision were made to collect this data in the proper categories and so on, it would be very useful not only to us but to all the

rest of the manufacturers and the insurance companies. Until we have information, we certainly cannot possibly figure what to do about it. These proving ground tests that might be promulgated where you would run cars presumably into other cars or into a barrier, would be so difficult to promulgate that we just think any similarity between the results of these artificial tests and what actually happens in the field would at best be coincidental.

We found, for example, that the shape of the bullet car bumper in a 45-degree side impact at the door has more to do with the amount of penetration and hence, I suppose, the repair costs of the car that it strikes than whether or not there is a side guard beam in the car that it strikes.

We ran another series of tests in connection with bumpers where we found that stiffening the corner of a bumper so it could pass a corner impact requirement actually caused an entirely different kind of crash between two approaching cars where they just barely hit each other to the extent that the car with the reinforced bumper did make \$800 or \$1,000 worth of damage to the car it hit, whereas the car with the weaker bumper, the original it started out with, kind of glanced off and only did one-third or one-quarter of the damage.

So, here you have got a case. I simply cite these actual test results to show that the collision damage situation is a very, very complex matter, and not one that you can really duplicate by running some tests at the proving ground.

Senator GRIFFIN. Mr. Terry, I think the answer to this question is obvious; but the cost of labor and making repairs is a significant item, isn't it?

Mr. TERRY. Yes, sir. Another reservation I would have about the ability of manufacturers to get the same kind of results that you get in the field. We would have standard mechanics who are really familiar with the cars and we would normally have them either fix the cars or estimate the cost of repairs, but we do not do some things that are commonly done in the field like straighten bumpers perhaps; in other words, manage to use the parts rather than replace them with used parts and the decision as to whether to replace or repair is always difficult, and it is different in almost every shop.

Senator GRIFFIN. In the repair shops around the country, is the rate of labor considerably different in one part of the country than another, and in some areas of a State than other areas of a State?

Mr. TERRY. Yes; I understand it is very different. I am not an expert in these matters, Senator Griffin. I just know in my own experience and the experience of members of my family having cars repaired, that by going to different shops you can get vastly different estimates.

Senator GRIFFIN. If the legislation were to utilize some system of publicizing actual cost data on repairing real accident cases, these differentials would become or could become apparent?

Mr. TERRY. Yes, I think it would—

Senator GRIFFIN. And taken into account?

Mr. TERRY. Yes; information would certainly help the situation, information as to actually what is happening. That is what everybody needs to improve the situation, in my opinion—just more information as to what is going on out there.

Senator GRIFFIN. Whereas the tests in your shop without any regard to what actual rates may be somewhere else may not be too significant in terms of insurance rates, depending on how much of it percentage-wise would be attributable to labor cost, I would assume?

Mr. TERRY. Well, that is right. The tests that we run, almost any tests I can visualize we would run, would be very unlikely to actually correlate very well. There has been an awful lot of talk about the barrier tests that Dr. Haddon and his insurance institute for highway safety have run. Just to infer that what happens in the 5-mile-an-hour barrier test is an index of what happens when cars actually crash together is a very, very dangerous assumption.

When you hit a barrier, you can be sure that the foremost part of the bumper is going to hit that flat barrier. But if the foremost part of that bumper is low or high and that same car hits almost any other car, the bumpers may not even contact. So the information you got out of the barrier crash is just not going to be applicable if you don't have a good bumper that meets other bumpers.

So it is a very complex situation, and we do not feel that the insurance institute figures represent the degree of susceptibility to damage any more than any other kinds of tests we can think of—any one kind of test.

Senator GRIFFIN. I have no further questions.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Mr. Terry, you make a statement that what we really need is more information in the hands of the consumer so that he can make more considered judgments as to the type of vehicle that he should purchase.

Mr. TERRY. In our hands, too.

Mr. SUTCLIFF. And in the hands of the manufacturers so they will know better what requirements the car environment actually required.

At the present time you are required to submit information to the Department of Transportation as to certain aspects of vehicle performance. Take, for example, the aspect related to the ability to take a vehicle from 60 miles per hour and bring it to a stop. That information is then compiled in a consumer information bulletin and is made available to the consumer through the dealer.

It is very interesting information, because it shows that there is a variety of stopping distances ranging from 135 feet to decelerate from 60 to 0 miles per hour to, at the high end of the spectrum, 263 feet, if my memory serves me correctly, to decelerate from 60 to 0 miles per hour.

It so happens that the car that takes the longest distance to stop is also a light car, and some of the heavier cars stop in distances of 165 feet, for example. According to your rationale, that type of information in the hands of the consumer should have a very positive effect upon manufacturers designing vehicles with shorter stopping distances because the consumer obviously, presented with that information, would want a vehicle that stopped at a shorter distance.

So, when you actually had wheels skid and when you did not is a very difficult thing to describe. You cannot allow the wheels to skid during the stopping operation. So, this means again that you have to be conservative in what you estimate you can do, and you want to be sure not to give a lower figure for every car than you can actually achieve.

Mr. TENY. We have some tire combinations and some loading combinations which may cause a relatively unfavorable weight distribution. The reason that we feel that the consumer is not too concerned about this—you see, there are other stopping distance requirements too, such as a wet pavement, and there you want a different weight distribution for maximum stopping ability than on a dry pavement. So whether a car is well designed or not, you have to ask whether you want a car that will stop quicker on a wet pavement or on a dry pavement. A lot of people would select one on a wet pavement.

Mr. SUTCLIFFE. At the present time do they have the information available to make either selection?

Mr. TERRY. Yes; there is plenty of information available on braking to the consumer in my opinion.

Mr. SUTCLIFFE. And that information has had a very beneficial impact upon the design of cars, cars' braking capabilities are being improved daily because of consumer choice in the marketplace, selecting out more appropriately cars that have better stopping distances?

Mr. TERRY. I do not know that the consumers are actually selecting cars with better numbers and we do not have any very good way of knowing that. Our information from our marketing people and from what we read in the press, surveys of various kinds, indicates that the consumer is not using this information very much.

Mr. SUTCLIFFE. How would they then use the information as to bumper capability that you suggest we rely upon rather than Federal standards?

Mr. TERRY. I said you would use insurance rate information.

Mr. SUTCLIFFE. Let's say we take that rate information in to the Secretary of Transportation who then puts it in a little companion booklet, Consumer Information Booklet No. 2, and hands it out to the dealers and says if a consumer comes in and ask for that information you are to make it available to him and you have to have that information available in the glove box of each car that is in fact sold. That information would have been digested by the Department of Transportation to give you, say, three or four different ratings. This car is A, B, C, or D as to property damage susceptibility and as to injury severity it is A, B, C, or D. The consumer is supposed to look at that and say I have an A here and a C here and different characteristics and I am supposed to use that in my decision to purchase a vehicle. That is conceivably one of the ways in which consumer information could be put out. Otherwise you could translate it right into insurance premium cost for the consumer in some way as S. 976 suggests you do.

We have all been on the highway when suddenly there is a panic stop, and there is a difference between a collision and no collision if you have that stopping capability.

What is your evaluation at the present time of the consumer information bulletin that the Department of Transportation makes available to dealers who are then in turn supposed to make it available for the consuming public?

Mr. TERRY. Well, I do not think the public uses it much. This particular example that you give for stopping distance is interesting. Actually, there is very little difference in the ability of cars to stop as far as the number of feet it takes for them to stop assuming that you have proper weight distribution for the conditions involved.

Now, there are a number of reasons why the data is spread out as much as it is, but —

Mr. SUTCLIFFE. Could you tell the committee what a couple of those reasons are?

Mr. TERRY. Yes; not the least of the reasons is we do not want to—we are permitted, let us say, to put down a stopping distance that we know will be greater than what the vehicle can actually do if we wish to. We are permitted that leeway. We do not run every make and model of car to determine its stopping distance. We divide them into groups, pick out the points where there is a fairly big gap in the group, and then we test the worst one, and we put down the same number for others so we know we can do at least as good or better than that. So we do not put down the best figure we can do for that particular one.

Another reason is we want to be sure and not give a lower figure than the vehicle can do. We want to be sure we can do better. We have tolerances on vehicles which are unavoidable. Brake lining varies from one vehicle to another. The way that these tests must be run is they must be run without allowing the wheels to skid, and this is a kind of subjective thing because we can go out and have skilled drivers run tests and every second or third time the skilled driver will skid the wheels and we have to go back and run the tests again.

I think the question is will that information in the hands of the consumer cause the free market system to select those vehicles that have the lower susceptibility to damage and therefore the competitive pressures improve the environment.

Mr. TERRY. Let me put it this way, Mr. Sutcliffe. We do not know what that information is. We do not know that there is a significant difference due to design in repair costs. We have not been able to get that information. Not knowing what it is, we cannot really estimate as to whether or not the information as to what differences are is going to influence the consumers or not.

If there turned out to be big differences in repair costs and car A is on the average \$100 cheaper to repair than car B, I am darned sure that the consumer would take account of that and do something about it.

We cannot lead the consumer to decisions on the basis of information we do not even have yet. I think the reason why the consumer is not paying more attention to these consumer information guides is that it is not significant, the differences are not significant. It does not tell him anything he does not already know.

If we do go to the actual data and find out what the differences are in cost of repairs on a statistical basis and it turns out that the differences are not very great, I am sure it would not mean much to the consumer.

Mr. SUTCLIFFE. You have 100 feet of stopping distance on that one, and you are suggesting that is not really a critical difference?

Mr. TERRY. I do not know what the high one is. I know what the low one is. It is a foreign-make car; and whether they would be able to do it on every car or not, I would bet you they could not.

At any rate, I am saying that the consumer thinks he knows that his car will stop satisfactorily and he is not interested in this data because he believes he has got good brakes and can stop under the conditions he wants to stop under.

Mr. SUTCLIFFE. I appreciate that exchange, and I think it will be very helpful for us to understand the import of your suggestion that we rely upon information in the free market system to foster these beneficial developments.

One final question. You argue against the setting of Federal property loss reduction standards on the theory that the free market system should be utilized instead. But then in another part of your testimony you argue for Federal preemption of existing State requirements.

Now, how do you propose to achieve Federal preemption of the statement requirements without having a Federal standard by which to preempt the State standards?

Mr. TERRY. Well, we have a Federal standard on bumpers.

Mr. SUTCLIFFE. But that is not on property loss reduction.

Mr. TERRY. I do not feel that a property loss reduction standard is required on bumpers.

Mr. SUTCLIFFE. But some States have promulgated property loss reduction standards on bumpers.

Mr. TERRY. Yes.

Mr. SUTCLIFFE. Or for vehicles through the use of bumpers.

Mr. TERRY. Yes. But, of course, what we are aiming at is not to have to build a lot of different kinds of cars for different States because of the cost involved and the complications involved.

Mr. SUTCLIFFE. So, one uniform standard at the national level would be preferable than 50 State standards that might be passed?

Mr. TERRY. Yes, sir.

Mr. SUTCLIFFE. I have no further questions.

Senator HART (presiding). Again, thank you very much, Mr. Terry, and for the third time my apology for having been unable to hear the testimony.

Mr. TERRY. Thank you, sir.

Senator HART. This concludes our list of witnesses for today. We adjourn to resume in this room at 10 o'clock tomorrow morning.

(Whereupon, at 3:20 p.m., the hearing was recessed, to reconvene at 10 a.m., Tuesday, May 11, 1971.)

(The following information was referred to on p. 1273:)

APRIL 16, 1971.

HON. MILES KIRKPATRICK,  
Chairman, Federal Trade Commission  
Washington, D.C.

DEAR MR. CHAIRMAN: The most recent issue of the *Yale Law Journal* (Vol. 80, No. 3) contains an article by a third-year law student which effectively argues that the annual model year style change practiced by the American automobile industry is an "unfair" trade practice under Section 5 of the Federal Trade Commission Act. Based on the excellence of the research and reasoning of this article, I am joining with the editors of the *Journal* in signing the attached petition to the Federal Trade Commission, requesting an immediate investigation of the anticompetitive effects of the annual restyling practice in the American automobile industry.

This law journal article has significant and simultaneous impact in two independent areas. First, the subject of the article and petition affects us all. The automobile industry's annual style change has had its intended effect: all competitors but four have been forced out of American industry, while the impenetrably high cost barriers created by frequent restyling have excluded listing new entrants for almost 50 years. Although foreign companies have recently encroached on the United States domestic market—15.3% of all cars sold in this country in 1970 were foreign-made (although over 10% of these were from United States-owned companies)—it has not altered the persistent fact of con-

centration: three American firms still account for about 83% of all auto sales in the United States last year and about 90% since 1935. It must also be emphasized that foreign sales have been limited mostly to either small, low-priced models (Volkswagen and Toyota) or to luxury types (Mercedes, Jaguars and Rolls Royce). The vast middle range of intermediate models remains virtually unchallenged by foreign manufacturers.

The styling issue is especially timely now, given recent statements by the Chairman of the two largest American auto manufacturers. James Roche of General Motors blames his critics for destruction of the free enterprise system when, in fact, that system lost out in the automobile marketplace shortly after initiation of the annual model year change introduced by General Motors in 1923. And Henry Ford II has stated with unaccustomed candor: "[O]ur customers are increasingly interested in reliability, safety, utility, and economy more than in styling novelty." So much for the oft-repeated industry myth that the public demands three-pronged fins and grinning grille patterns.

In an industry where competition has been centered on petty styling distinctions, sales are heavily dependent on industry advertising to transform trivia into deceptive significance. The huge advertising expenditures, which broadcast annual style changes and their psycho-sexual associations, push the barriers to entry yet higher.

Not only is the dominant advertising of style changes costly and displacing of functional production information to the consumer; it is also inherently deceptive. Your "totally new Impala" is nothing of the sort; it is a warmed-over version of last year's "all new Impala", graced by the rhetoric of a complete change to induce new and trade-in sales. It is a scarcely changed Impala sold in a "new" model year. And you are not told that the cost of repairing your 1971 Impala after a five mile per hour front or rear crash is almost double the cost of similar repairs on last year's new Impala (see March 10, 1971 testimony by the Insurance Institute for Highway Safety before the Senate Commerce Committee). Thus, consumers are persuaded to accept styling changes because they believe they are getting a basically new product with the style change merely the indicia of that newness. They are manipulated into thinking they are getting something when they are not—when, indeed, they are losing the added quality, safety, and durability which styling expense and promotion displace. Believing the lies, consumers are then hoist on their own trust.

Moreover, the consumer has little choice in his preferences, since this tight oligopoly has imposed very limited options with stylistic features (like fins) as "standard equipment" without their distinct cost disclosed, while safety features are offered as optional, extra cost equipment. One could easily imagine wider choices and combinations around function (cheaper care without these so-called styling changes and cars with significant product improvements instead of expensive styling), if styling were not a strategy to perpetuate a tight oligopoly, aftermarket sales, and barriers to entry. The economies of scale of the Big Three more than afford such functional rather than stylistic product differentiation.

The annual model change has other detrimental by-products: (1) The billions spent on design (estimated by Senator Gaylord Nelson at \$1.5 billion per year just for new dies and tooling) is money, talent and ingenuity withheld from important performance innovations (performance changes are estimated at three percent of style expenditures by the Bureau of Labor Statistics (BLS)). As former Ford Vice President Donald Frey told an engineering audience in 1964: "The automatic transmission [adopted in the late Thirties on a limited mass production basis] was the last major innovation of the industry."

(2) It has become a basic deterrent to rapid implementation of needed safety and pollution regulations. The Department of Transportation, for example, from the beginning has adjusted the effective dates of new rulemaking to the model year style change, allowing two, three and even four years lead time because designs are "locked up" several years in advance of production. Thus, while 56,000 people annually are killed and millions injured in auto crashes, vision-obscuring fastbacks are constructed, the wheel base is extended two inches, the antenna is molded into the windshield, and windshield wipers are hidden in sharp crevices which slice through passengers in frontal crashes.

(3) The styling changes *themselves* are often dangerous to pedestrians and occupants. The stylistic demons produced for annual model showing continue to incorporate pointed bumper weaponry which increases the toll of 10,000 vehicle/pedestrian deaths and half a million injuries each year. Hood ornaments, absent from American vehicles for the past several years, are now returning to their prominent frontal position at about the level of a five-year-old's head. The

notorious horn ring and dashboard slicers have severely injured vehicle drivers and passengers, while the hard top model has weakened the side and rollover protection for occupants. A violent stylistic pornography prevails over humane engineering integrity.

(4) Constant body and parts alterations to accommodate new exterior and interior designs often result in safety defects. By the time a design is perfected, new style changes sufficiently alter the structure to create new defects, *ad infinitum*. The car model does not endure long enough to benefit from manufacturing and usage experience. Only new safety and durability features justify such annual changes.

(5) Focusing on pollution, a three-firm oligopoly can resist public and governmental pressures to be innovative on anti-pollution implementation. With a huge capital investment in existing manufacturing equipment, any such change is viewed with hostility. The illegal collusion uncovered and described in the 1969 Justice Department "smog" complaint is an example of how an oligopoly can rest on its conspiratorially-orchestrated oars until challenged by the law. And the introduction of a wholly new propulsion system—whether steam, electricity, turbine, freon or hybrid—is made impossible by the entry costs of large plant economies, advertising outlays and vertical integration which annual styling change requires.

(6) Annual style change buttresses the industry's profiteering in "aftermarket" (replacement parts) sales. Frequently redesigning parts, many of which will need repair, and then coercing the car buyer to return to the franchised dealers for replacement under the warranty system, guarantees the companies a lucrative return. Sculpturing the sheet metal slightly differently from year to year, for example, insures a captive parts aftermarket. Only Chevrolet can afford to sell a replacement part for the the 1969 Chevy and a differently-shaped part for the 1970 Chevy. Style leads to fragile ornamental bumpers, which permit the aftermarket sales of enormous quantities of crash parts, as a widely acknowledged within auto insurance circles. A recent Ph.D. thesis argues that General Motors' 20% average rate of return on capital is due largely to its parts sales (R. W. Crandell, Vertical Integration in the United States Automobile Industry).

The *Yale Law Journal* article emphasizes Section 5 of the Federal Trade Commission Act as the preferred statutory vehicle for legal attack. It is understandable why the author is pessimistic about the prospects for a "shared monopoly" suit in the auto industry. The basic problem of such a suit, however, is *not* that adequate legal doctrine does not exist to support it. By combining the size *per se* language of *Alcon* (1946) with the oligopolistic parallelism found in *American Tobacco* (1946), *Cement Institute* (1948), motion picture cases (1948), and motion picture advertising case (1954), and by utilizing the ignored "retroactivity" principle of *General Motors-DuPont* (1957), a shared monopoly suit to divest the auto companies vertically and horizontally could be instituted. Such a theory has been discussed at the Justice Department and proposed by repeated high level staff studies as a basis for a complaint in the auto industry (among others), but it has never been favorably acted upon by an Antitrust Assistant Attorney General. The Section 5 approach presently appears the most favorable statutory route, but only until the Antitrust Division summons up its courage to utilize the ample precedent which exists.

One relief alternative mentioned in the Yale article would declare a "fixed term moratorium" on style changes—but not performance changes. The Bureau of Labor Statistics (BLS) presently makes such a distinction in computing the price indexes. But before a BLS or similar system is relied on to make such judgments, two things must be stressed: (1) engineers, not only economists, must help in the analysis of quality vs. styling changes; and (2) there must be independent sources of information on automobiles—sources other than the auto firms themselves. Since BLS presently lacks both, being largely tied to the industry for its source of information, it is an inadequate call for judging what are styling changes.

This petition is an important example of citizen involvement in our legal enforcement system. In the field of discrimination, *Brown v. Board of Education* and *Jonas v. Mayer*, two private suits, established the most innovative precedent on racial discrimination in the last two decades. The policing of our corporations is also too important to be left merely to government agencies—agencies which have often adopted the principle that least is best. This petition, however, is not a lawsuit (which the federal regulations do not permit in this case) but a request for an investigation pursuant to a complaint. It is now incumbent on the Federal Trade Commission to break the perennial failure of antitrust en-

forcement in the auto industry. The task is large but the return to consumers and a competitive economy is immense, both in economic and safety-health terms.

A second and related contribution is made by publication of this article and filing of this petition. It adds to the trend that law schools and law journals are no longer content to count angels on pinheads. Attentive to problems of policy as well as procedure, eager to have an impact beyond classroom recitation, law students are beginning to devote their skills to serious contemporary problems. The utilization of this reservoir of energy and creativity cannot be underestimated, for it is often the student-scholar who can best illuminate the difficult legal issues which the legal profession is too busy, or too financially jaundiced, to confront. Industrial corporations have for too long evaded the scrutiny of legal scholarship, often by coopting their potential critics. That is now and here changing.

Sincerely,

RALPH NADER.

Enclosures.

[From the Yale Law Journal, New Haven, Conn.]

(Contact, Brad Snell)

STATEMENT FOR THE PRESS, FOR RELEASE AT 12 NOON ON SUNDAY, APRIL 18, 1971;  
AND TO MORNING PAPERS OF MONDAY, APRIL 19, 1971

Annual change in the style of automobiles has become an accepted way of life in this country, but now such change is under attack as a violation of the federal antitrust laws.

The attack against the style change policies of the Big Three automobile manufacturers appears in a complaint by Ralph Nader and members of *The Yale Law Journal* which was filed with the FTC on April 19, 1971. The complaint is based on a new antitrust doctrine developed in a special study that appears in the latest issue of *The Yale Law Journal*, a publication edited by Yale Law students.

The study describes a new antitrust theory under which annual style change may constitute an antitrust violation. Currently, annual restyling in the automobile industry is considered immune from prosecution under conventional Sherman and Clayton Act doctrine because of the absence either of monopoly or of explicit agreement among the Big Three. The *Journal* report adopts a new approach and demonstrates that Section 5 of the Federal Trade Commission Act empowers the FTC to investigate and to bring suit against this practice. Style change, the article concludes, is an "unfair method of competition" under the Act because it prevents new firms from entering the automobile industry.

For nearly fifty years, General Motors, Ford and Chrysler have annually changed the styles of their automobiles. The study suggests that this practice has occasioned an exit by more than 80 smaller automobile producers and barred future entry into the industry. As a result, since 1935, the Big Three have accounted for about 90 per cent of automobile sales in the United States. This concentration of sales in three firms, the report notes, is generally considered to be inimical to competitive conduct in an industry.

The article demonstrates that "concentration-increasing" practices such as annual style change were what Congress sought to prohibit when it passed the Federal Trade Commission Act in 1914 and calls upon FTC to fulfill the role that Congress had originally designed for the agency.

The report urges that "the broad legislative mandate and judicial development" of Section 5 of the Act compels the FTC to strike down annual restyling by the Big Three as an "unfair method of competition." Breaking the automobile manufacturers into several autonomous companies, it adds, would be the most appropriate and effective remedy.

The study, "Annual Style Change in the Automobile Industry as an Unfair Method of Competition," written by Bradford C. Snell, a third year law student and editor of *The Yale Law Journal*, is contained in the *Journal's* most recent issue (Vol. 80, no. 3, pp. 567-613) which was released today. The *Journal*, published monthly, carries articles by students, faculty and other legal experts.

"Industrial competition is the unequivocal premise of free market economic theory and of antitrust doctrine," the study begins. "Automobile manufacturing is one of the least competitive industries in the American economy."

Ninety-seven per cent of domestic automobile production is centered in three firms; four firms account for all passenger vehicles produced in this country.

Such a highly concentrated structure, the report says, precludes effective competition and satisfactory performance.

As a result, "the industry is characterized by inflated selling costs, product imitation, higher than competitive prices, collusive suppression of technological innovation, and persistently high rates of return." The study notes, for example, that pollution-free electric and steam vehicles can now be produced which would cost half as much to own and even less to operate than conventional gasoline automobiles. Yet the introduction of these new vehicles has been suppressed by the Big Three.

Annual restyling required four activities which small producers could ill-afford to undertake: in-house production of body and engine components, formidable advertising campaigns to accompany new model introduction, a nationwide network of franchised dealers, tremendous capital resources.

"Whether by design or mere accident," the report states, GM's introduction of annual style change in 1923 "eliminated smaller producers unable or unwilling to restyle their products every year." There were 88 American automobile manufacturers in 1921. In the course of three years, from 1923 to 1926, 48 left the market. By 1935, only 10 firms remained, with the Big Three holding 90 per cent of the market.

"Style change has proved to be as effective a market weapon" in discouraging newcomers as it had been in eliminating earlier automobile companies, the study observes. It constitutes an insuperable barrier to new entry. As the report points out, "not a single firm has entered and survived in the automobile industry since 1923."

A prospective firm would need nearly a billion dollars to break into passenger car manufacturing, the study estimates. Had annual restyling not restructured the industry, it calculates that a firm could enter today for less than one-tenth of this cost.

This Big Three may also employ style change as a substitute for cost savings innovations. "By introducing a restyled model each year," the report says, "they provide consumers with the illusion of progress" yet avoid making improvements which might extend the life of automobiles.

A sharp distinction is drawn in the study between style and performance changes. Smaller producers, it notes, were able to develop significant automotive innovations. But the style change race ultimately eliminated all but those with huge facilities and tremendous capital resources.

According to the report, the annual change of automobile models has consisted predominantly of style rather than performance alteration. It says that in the past four years the Big Three have spent about \$1½ billion annually to change their models, but that less than 3 per cent of this amount was expended on performance improvements.

Annual style change by the Big Three has never been attacked under the antitrust laws. The law journal study suggest, however, that Section 5 of the Federal Trade Commission Act prohibits practices which, like annual restyling, substantially increase industry concentration.

Thirty years ago, recalls the report, the FTC expressed concern that the "increasing importance of the style factor, the huge capital and equipment resources required to finance new models" might eliminate smaller though no less efficient competitors of the Big Three. Today all but one, American Motors, have vanished. "Only the FTC's political or administrative paralysis," the study says, "bars bringing a successful suit against the three automobile manufacturers."

If the FTC sues the Big Three, and wins, it would be entitled to far-reaching sanctions. As the fundamental impact of annual restyling was concentration of production in the hands of three firms, suggests the report, breaking these corporations into several autonomous producers would be most appropriate and most effective in restoring competition to the automobile industry.

APRIL 19, 1971.

#### REQUEST FOR AN FTC INVESTIGATION

Pursuant to 16 F.C.R. sections 2.1 and 2.2 the following named individuals and organizations request that the Federal Trade Commission institute an investigation of annual restyling practices by General Motors Corp., with offices and principal place of business at the General Motors Building, Detroit, Michigan, 48202; Ford Motor Co., with offices and principal place of business at The

American Road, Dearborn, Michigan, 48121; and Chrysler Motors Corp., with offices and principal place of business at 12200 E. Jefferson Ave., Detroit, Michigan, 48231, for alleged violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. sec. 45 (1964). Supporting information regarding the alleged violations is attached to this request.

(S) RALPH NADER,

Benjamin W. Heineman, Jr., David E Kendall, Bradford C. Snell, Ron Gilson, John Rupp, David Cook, David Kaye, Jim Huntwork, David Schulte, John Kuhns, Barbara Brown, Eric Neisser, Nancy Gertner, Steve Hadley, Tom Jorde, John Crook, John Dystel, Mark Tushnet, Larry Lustgarten, Harold Kwalwasser, Jeff Glekel, Linda Tedeschi, Rick Block, Bill Kelly, Steve Oxman, Steve Munzer, David Schneider, Jerry Wilkerson, Reid Feldman, Al Wilensky, Jerry Siegel, Susan Goldberg, Henry Fields, Andy Hurwitz, Stan Jaspan, Dan Steinbock, Peter Hamilton, Stan Inghber, Bob Carter, Members of: The Yale Law Journal, Yale Law School, 127 Wall Street, New Haven, Conn. 06520.

## Annual Style Change in the Automobile Industry as an Unfair Method of Competition

Bradford C. Snell

Since 1935, General Motors, Ford and Chrysler have accounted for about 90 per cent of automobile sales in the United States. This Note will argue that such a concentration of sales in three firms is inimical to competition in this industry. Moreover, it will contend that these firms achieved and preserved undue concentration in violation of Section 5 of the Federal Trade Commission Act through their pursuit of an "unfair" trade practice: annual style change. Part I briefly sets forth the relevant economic and legal criteria for evaluating competition in the automobile industry. The preliminary economic analysis in Part II suggests the anticompetitive nature of annual style change which justifies a more searching analysis by the Federal Trade Commission. Part III argues the applicability of Section 5 of the Federal Trade Commission Act to annual automobile style change, and Part IV outlines some considerations regarding appropriate relief which the FTC could seek.

### I. Evaluating Competition

Industrial competition is the unequivocal premise of free market economic theory and of antitrust doctrine.<sup>1</sup> It is generally evaluated in terms of three distinct market elements: structure, conduct and performance.<sup>2</sup> The competitiveness of an industry's structure depends upon

1. The most thorough treatment of the combined legal and economic implications of industrial competition is that of C. KAYSER & D. TURNER, *ANTITRUST POLICY: AN ECONOMIC AND LEGAL ANALYSIS* (1965). That competition is the fundamental premise of antitrust doctrine was proclaimed early by the Supreme Court in *Standard Oil Co. v. United States*, 221 U.S. 1, 52 (1911); and more recently in *Northern Pacific Ry. v. United States*, 356 U.S. 1, 4-5 (1958): "the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress . . ."

2. For a lucid economic analysis of the structure-conduct-performance analysis, see R. CAVES, *AMERICAN INDUSTRY: STRUCTURE, CONDUCT, PERFORMANCE* (2d ed. 1967). A more exhaustive description of this analytic framework is provided in J. BAIN, *INDUSTRIAL ORGANIZATION* (2d ed. 1968) [hereinafter cited as *INDUSTRIAL ORGANIZATION*]. For a general application of this analysis to antitrust problems, see C. Mueller, *The New Antitrust: A Structural Approach*, 1 *ANTITRUST LAW & ECON. REV.* 87 (Winter 1967); S. Smith, *Antitrust and the Monopoly Problem*, 2 *ANTITRUST LAW & ECON. REV.* 19 (Summer 1969). This framework has also been recently employed in the courtroom. See, e.g., transcript excerpts from *Columbia Broadcasting System, Inc. (FTC 1967)*, reported by Hirta, *Economics in the Courtroom: A Structural Defense in a Monopoly Case*, 1 *ANTITRUST LAW & ECON. REV.* 45 (Summer 1968); *Golden Grain Macaroni Co. (FTC 1969)*, reported by Scanlon, *"Technology" of Antitrust Litigation*, 3 *ANTITRUST LAW & ECON. REV.* 43 (Fall 1969).

market concentration (the number of firms and their individual shares of industry sales) and barriers to entry (obstacles that impose on newcomers higher costs per unit than those encountered by the established firms).<sup>3</sup> The competitiveness of an industry's conduct depends upon how constituent firms make price and output decisions (independently, interdependently or collusively) and with what purpose or effect (enhanced interfirm rivalry, exclusion of newcomers, or predation).<sup>4</sup> The competitiveness of an industry's performance depends upon the extent to which its conduct contributes to progressiveness (the number and importance of actual innovations as compared with what optimally could have been developed) and to efficiency (the reduction of costs and prices to absolute minima).<sup>5</sup>

#### A. *Economic Criteria; Market Structure as the Determinant of Industry Conduct and Performance*

Holding that structure determines conduct and conduct determines performance,<sup>6</sup> much antitrust economic theory posits that an anticompetitively structured industry precludes the long-run survival of effectively competitive conduct and performance.<sup>7</sup> In fact, empirical studies indicate that high market concentration and high barriers to entry (structural factors) engender price fixing, price leadership, product imitation and other forms of collusive and interdependent behavior

3. The competitive significance of market concentration is said to lie in the fact that, as the number of firms decreases and the percentage of total industry sales held by each increases, the probability of their recognizing their "mutual interdependence," i.e., starting to price like collective monopolists rather than independent competitors, begins to increase significantly beyond a critical point. Mueller, *supra* note 2, at 89.

Barriers to entry are generally treated in three separate categories: (1) scale economy barriers (cost disadvantages resulting from inefficient levels of production), (2) product differentiation barriers (relating to promotional cost disadvantages), and (3) absolute cost barriers (primarily cost disadvantages encountered by entrants in securing essential input factors, e.g., patents or capital). For a detailed explication of these various concepts, see J. BAIN, *BARRIERS TO NEW COMPETITION* (1956) [hereinafter cited as *BARRIERS*].

4. As distinguished from structure or performance, "conduct" refers to those actions taken by the individual firm as part of its competitive strategy. It involves two dimensions: (1) whether price and output decisions are made independently or collusively (collusion in the economic sense, thereby including interdependent oligopoly behavior as well as conspiratorial overt or tacit agreement), and (2) the intent (i.e., predation) or effect (heightened interfirm rivalry or exclusion of competitors). Mueller, *supra* note 2, at 90.

5. "Performance" refers to the appraisal of how much the economic results of an industry's conduct deviate from the best possible contribution it could make to achieving the general goals of a free market economic system, particularly efficiency in production, distribution and progressiveness in the development and application of technological innovation. See CAVES, *supra* note 2, at 96-115.

6. Mueller, *supra* note 2, at 89-90.

7. *Id.* at 91. "[A]n industry which does not have a competitive structure will not have competitive behavior." United States v. du Pont (Cellophane), 351 U.S. 377, 426 (1956) (dissenting opinion).

## Automobile Industry

(conduct), which lead to artificially inflated prices and diminished rates of innovation (performance features).<sup>8</sup>

More specifically, an impressive amount of economic data supports the judgment that concentration of more than 50 per cent of an industry's sales in four or fewer firms (*i.e.*, a "tight oligopoly") gives rise to conduct and performance which approximate that of a monopolist or well-disciplined cartel.<sup>9</sup> This degree of concentration destroys the incentive for independent decisions on price and output, and encourages instead the development of "oligopolistic interdependence," a recognition that the profits of each firm are dependent on the decisions of each of the others.<sup>10</sup> As a result, these few firms collectively eschew price and product competition in favor of "joint-profit maximization": output is restricted and prices are set above competitive levels, albeit in a noncollusive fashion.<sup>11</sup> In effect, the industry is "collectively monopolized."<sup>12</sup>

Barriers to entry comprise the second structural criteria for evaluating industrial competition. Leading firms in a tight oligopoly can set higher-than-competitive prices and reap monopoly profits only if they are able to deter new entrants whose added output would push prices back to a competitive level.<sup>13</sup> The effectiveness of these barriers is reflected generally by the persistence of high concentration levels.<sup>14</sup>

8. See, e.g., Erickson, *The Economics of Price Fixing*, 2 ANTIT. LAW & ECON. REV. 94 (Spring 1969); Mueller, *supra* note 2, at 90-91; Weiss, *Average Concentration Ratios and Industrial Performance*, J. OF INDUS. ECON. (July 1963); Collins & Preston, *Concentration and Price Margins in Food Manufacturing Industries*, J. OF INDUS. ECON. 226 (July 1966); Stigler, *A Theory of Oligopoly*, 72 J. POL. ECON. 41 (1964); Mann, *Seller Concentration, Barriers to Entry, and Rates of Return in Thirty Industries, 1950-1960*, REV. OF ECON. & STAT. 296-307 (August 1966). See generally Machlup, *Oligopoly and the Free Society*, 1 ANTIT. LAW & ECON. REV. 11 (July-August 1967). A voluminous compilation of economic studies concerning the effect of high industry concentration on market competition and performance is contained in  *Hearings on Economic Concentration, Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess. (1965).

9. Mueller, *supra* note 2, at 116-117.

10. *Id.* at 112-16. Galbraith refers to this form of price and output behavior as "oligopolistic rationality." *Hearing on Planning, Regulation and Competition in the New Industrial State, Before Subcomm. of the Select Comm. on Small Business*, 90th Cong., 1st Sess. 8 (1967). In ruling on mergers, the Supreme Court has acknowledged the problem of mutual interdependence in highly concentrated industries. It has noted that as industries become more highly oligopolistic "... the greater is the likelihood that parallel policies of mutual advantage, not competition, will emerge." *United States v. Aluminum Co. of America*, 377 U.S. 271, 280 (1964).

11. KAYSER & TURNER, *supra* note 1, at 105; Mueller, *supra* note 2, at 114-16. See also REPORT OF THE WHITE HOUSE TASK FORCE ON ANTITRUST POLICY 3 (released May 21, 1969) [hereinafter cited as THE NEAL REPORT].

12. Mueller, *supra* note 2, at 115.

13. See CAVES, *supra* note 2, at 22-23; note 3 *supra*. Established firms in persistently concentrated industries have accomplished this by erecting obstacles that impose on newcomers higher costs per unit than those encountered by firms already in the industry. Mueller, *supra* note 2, at 89 n.7.

14. Thus, it has been suggested that where an industry's concentration ratio has been at

More precise measurements of entry barriers, however, have been developed. Empirical investigations reveal that large economies of scale, high promotional expenditures, and enormous capital requirements are powerful deterrents to new entry.<sup>15</sup> If an industry is surrounded by any one of these barriers, the possibility of new entry is substantially reduced. If it is protected by all three, entry is "effectively blockaded."<sup>16</sup> By preserving tight oligopolies from the deconcentration which would result if new firms were able to enter, barriers of such magnitude contribute to anticompetitive conduct and unsatisfactory performance.

Accordingly, some antitrust economists now urge divestiture of leading firms in industries with 4-firm concentration ratios of 50 per cent or more and with barriers which all but foreclose new entry.<sup>17</sup> They contend that deconcentrated industries would behave more competitively in making price and output decisions and would perform more satisfactorily by providing consumers with lower prices, reduced production and distribution costs, and an accelerated rate of technological innovation. In short, they argue that a larger number of competitors would provide a greater degree of competition.

**B. *Legal Criteria: The Gap Between Economic Reality and Antitrust Laws in the Automobile Industry***

As measured by either of the structural economic criteria, automobile manufacturing is one of the least competitive industries in the American economy. Its structural concentration is unprecedented. Ninety-seven per cent of domestic production is centered in three firms; four firms account for all passenger vehicles produced in this country.<sup>18</sup>

70 per cent or more for 7 of the past 10 years, substantial barriers can be presumed. THE NEAL REPORT, *supra* note 11, at 5-7, 15. *But see* Brozen's criticism that the NEAL REPORT fails to deal explicitly with entry barriers. *The Antitrust Task Force*, 13 J. LAW & ECON. 279, 284 (1970).

15. *See generally* BARRIERS, *supra* note 3. In his intensive survey of 20 American industries, Professor Bain for example found that entry was extremely unlikely in concentrated industries with significant economies of scale up to 5 per cent or more of national sales volume *Id.* at 81. Tremendous promotional expenditures which compel newcomers to outspend established firms by an additional 5 per cent of unit retail price in countervailing promotion represented a further impediment to new competition *Id.* at 127. Moreover, when the initial capital required for entry into an industry at an efficient level of production and distribution exceeded \$100 million, entry was highly improbable, *Id.* at 158.

16. Mueller, *supra* note 2, at 124. *See* BARRIERS, *supra* note 3, at 170.

17. *See, e.g.,* KAYSER & TURNER, *supra* note 1, at 266-72; Smith, *supra* note 2, at 20-21. Other economists set the critical 4-firm concentration ratio for divestiture purposes at 70 percent. THE NEAL REPORT, *supra* note 11, 12-15.

18. STANDARD & POOR, INDUSTRY SURVEYS: Autos—Basic Analysis (October 1, 1970) at A161. The market shares by producers for 1969 were as follows: General Motors—53.7%, Ford—26.3%, Chrysler—16.9%, American Motors—3.0%. Although generally not considered a passenger car producer, Checker Motors accounted for the 0.1% remainder of 1969 production. *Id.* The Big Three continued to hold 96.6% of the market during the first half of

## Automobile Industry

This degree of concentration is twice that generally considered inimical to competitive conduct and performance.<sup>19</sup> Moreover, the condition of entry into automobile production has been described as "effectively blockaded."<sup>20</sup> Concentration has exceeded the 70 per cent threshold for presumptively high barriers to entry not only for 7 of the past 10 years, but for each of the past 40 years.<sup>21</sup> More precisely, the industry strikingly exhibits the indicia of high barriers to entry: large economies of scale, high promotional expenditures, and enormous capital requirements.<sup>22</sup>

Given its anticompetitive structure, the anticompetitive nature of the automobile industry's conduct and performance is not unexpected. In fact, the Big Three interdependently engage in price and product conduct which has the same anticompetitive impact as if it had been collusively planned.<sup>23</sup> As a result, the industry is said to exhibit the indicia of unsatisfactory market performance: inflated selling costs, product imitation, higher-than-competitive prices, collusive suppression of technological innovation, and persistently high rates of return.<sup>24</sup>

1970. STANDARD & POOR, *INDUSTRY SURVEYS: Autos—Current Analysis* (August 13, 1970) at A152.

19. See note 9 *supra*.

20. L. WEISS, *ECONOMICS AND THE AMERICAN INDUSTRY* 375 (1966). Bain concludes that obstacles to entry into the industry are "insuperable." INDUSTRIAL ORGANIZATION, *supra* note 2, at 287. Economists Schupack and Carroll describe the wall surrounding the automobile industry as "insurmountable" and "impregnable," respectively. *Hearings before Subcomm. of the Senate Select Comm. on Small Business on Planning, Regulation, and Competition in the American Industry*, 90th Cong. 2d Sess. 907, 920 n.6 (1968) [hereinafter cited as *1968 Hearings*]. But see note 124 *infra*.

21. The Big Three (GM, Ford and Chrysler) have accounted for more than 70 percent of industry sales since 1929. FEDERAL TRADE COMMISSION, *REPORT ON THE MOTOR VEHICLE INDUSTRY* 29 (1939) [hereinafter cited as *FTC REPORT*]; *AUTOMOTIVE NEWS, ALMANAC ISSUES*, for each of the years since 1937.

22. Economies of scale in this industry require that, merely to survive, a firm must capture from 4 to 8 per cent or more of total sales. These percentages were derived from Bain's minimum scale economy estimates of 300,000–600,000 unit production per year, as applied to 1969 industry sales of 8.38 million. INDUSTRIAL ORGANIZATION, *supra* note 2, at 286; STANDARD & POOR, *supra* note 18, at A159. This scale economy disadvantage was found by Bain to be one of the most formidable of its kind in American industry. See note 15 *supra*. Promotional losses, resulting particularly from price concessions necessary to maintain a solvent national dealership system, would likely average at least 5 per cent of factory price over the first 5 to 10 years. INDUSTRIAL ORGANIZATION, *supra* note 2, at 285–86. This represents the severest of promotional disadvantages revealed in Bain's studies. See note 15 *supra*. The absolute minimum amount of capital required for efficient production and distribution has been estimated at \$779 million, or more than 7 times larger than the amount considered by Bain as making entry highly improbable. See note 15 *supra* and p. 588 *infra*. Significantly, not a single firm has entered the automobile industry since 1923. See generally Vatter, *The Closure of Entry in the American Automobile Industry*, 4 OXFORD ECON. PAPERS 213 (1952).

23. See, e.g., BARRIERS, *supra* note 3, at 216; Galbraith, *supra* note 10, at 8.

24. See WEISS, *supra* note 20, at 350–68; Lanzillotti, *The Automobile Industry*, in W. ADAMS, *THE STRUCTURE OF AMERICAN INDUSTRY* 338–46 (1961); Loescher in *1968 Hearings*, *supra* note 20, 913–17. The industry's protective imitation of product designs has been underscored by BAIN in INDUSTRIAL ORGANIZATION 425; Lanzillotti, *supra* at 329–30. Its failure to develop durable and pollution-free vehicles is emphasized in J. ESPOSITO, *VANISHING AIR*:

Just from available data, a strong presumption arises that in structure, conduct and performance, the automobile industry is, at least by comparison to other industries, markedly anticompetitive. Yet, it has escaped antitrust prosecution. It seems to represent, therefore, a striking example of the gap which exists between economic reality and antitrust remedies.

Unlike antitrust economic theory, the antitrust laws focus on the behavioral rather than structural element of the structure-conduct-performance triad. They are primarily concerned with outlawing offensive business conduct rather than with striking down anticompetitive structures which produce unsatisfactory performance.<sup>25</sup> Thus, the Sherman Act proscribes not structural monopoly but collusive activities "in restraint of trade" and activities that tend to "monopolize" trade.<sup>26</sup> Economists and antitrust officials generally agree, however, that while the Big Three's price and output conduct has an impact effectively equivalent to that of a Sherman Act conspiracy, these decisions are

THE NADER REPORT ON AIR POLLUTION ch. 2 (1970); and by Sen. Nelson in *Hearings on the Role of Giant Corporations Before the Subcomm. on Monopoly of the Senate Select Comm. on Small Business*, 91st Cong. 1st Sess. 538-39 (1969) [hereinafter cited as 1969 *Hearings*]. See also the complaint filed by the Antitrust Division of the Department of Justice in January of 1969 charging that the Big Three had conspired in violation of section 1 of the Sherman Act to suppress the development of automotive emission control devices. *United States v. Automobile Mfrs. Ass'n, Inc.* (D. Cal. January 10, 1969). A consent decree was entered enjoining the conspiracy in October, 1969 Trade Cases ¶ 72,907. But fifteen states subsequently have sued *parens patriae* in the Supreme Court asking for a mandatory injunction compelling the auto makers to develop a pollution-free engine at the earliest possible date. *State of Washington v. General Motors*, 5 TRADE REG. REP. ¶ 50,285, at 55,613 (August 17, 1970). Indeed, within the past few months GM, Ford and Chrysler have joined in a major counter-attack against government agencies and consumer protection groups which complained that the industry was refusing to produce safer, pollution-free cars. Ford, for example, has sent brochures which term automotive air pollution a myth to its 7,000 dealers for redistribution to the public. Similarly, Chrysler has sent its chief emission expert around the country to argue that the elimination of automotive emissions "cannot be justified during most of this decade." N.Y. Times, November 18, 1970, at 6, col. 1. Meanwhile, GM has set a new trend in automotive safety by seeking a court injunction against a Department of Transportation recall order regarding serious safety defects in the wheels of 200,000 GM pickup trucks. NEWSWEEK November 23, 1970, at 112. But see recently enacted federal legislation encouraging the production of pollution-free automobiles. Pub. L. No. 91-604 (Dec. 31, 1970).

25. Mueller, *supra* note 2, at 105-06; Smith, *supra* note 2, at 41. It has been suggested, however, that the Supreme Court's merger opinions since 1962 reflect a growing judicial acceptance of the critical role of market structure. Brodley, *Oligopoly Power Under the Sherman and Clayton Acts—From Economic Theory to Legal Policy*, 19 STAN. L. REV. 285, 298 (1967). See, e.g., *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321 (1963); *United States v. Aluminum Co. of America*, 377 U.S. 271 (1964); *Federal Trade Commission v. Procter & Gamble Co.*, 386 U.S. 568 (1967). The influence of the "structuralist" approach in the merger area can also be seen in the heavy reliance placed on concentration ratios in enforcement guidelines by the Department of Justice and the Federal Trade Commission.

26. 15 U.S.C. §§ 1, 2 (1964).

## Automobile Industry

made interdependently, without any evidence of collusion.<sup>27</sup> Moreover, although the exclusion of nearly a hundred earlier producers and erection of insurmountable barriers to new entry were as effective as the conduct of a predatory monopolist, this result could not provide the basis for a Sherman Act charge of monopolization absent the emergence of a single monopoly firm.<sup>28</sup> Similarly, the Clayton Act reaches mergers or coercive practices such as exclusive dealing and tying arrangements.<sup>29</sup> Although the Big Three's conduct is analogous in anti-competitive impact to these forbidden practices, it is again distinguishable by its lack of agreement.<sup>30</sup>

For years, antitrust commentators have sought to stretch existing antitrust doctrine to reach the presumed anticompetitive aspects of the automobile industry. Professors Turner and Posner, for example, have argued that "agreement" under the Sherman Act might include or be redefined to include interdependent though non-collusive behavior by jointly-acting oligopolists.<sup>31</sup> The broadest reading of conspiracy law holdings under the Sherman Act, however, would not permit such an elastic interpretation of agreement.<sup>32</sup>

Alternatively, Professors Turner and Sherwood have suggested that since the Sherman Act looks to substance rather than form, the conduct of jointly-acting oligopolists should be treated as that of a single monopolist when their effects are almost identical. Thus, they have urged that where oligopolists effectively "share monopoly power" and engage in predatory or exclusionary practices, they might be charged with having monopolized in violation of the Sherman Act.<sup>33</sup> Significantly, however, neither Turner nor Sherwood could cite a single

27. WEISS observes, for example, that the automobile industry "avoids formal collusion" and that "[t]here is no evidence that blockaded entry was intentionally sought by members of the industry," *supra* note 20, at 375; BARRIERS, *supra* note 3, at 216.

28. *But see* note 33 *infra*.

29. 15 U.S.C. § 15 (1964).

30. *See* pp. 605-07 *infra*.

31. Posner argues that noncompetitive oligopoly pricing behavior results from "tacit collusion" which can be proceeded against under section 1 of the Sherman Act. *Oligopoly and the Antitrust Laws: A Suggested Approach*, 21 STAN. L. REV. 1562 (1969). Turner urges that although interdependent oligopoly pricing should not be prosecuted under section 1, interdependent oligopoly nonpricing conduct is arguably reachable under that section. *The Definition of Agreement Under the Sherman Act*, 75 HARV. L. REV. 655, *esp.* at 677-84 (1962).

32. Although Turner interprets conspiracy language in *Interstate Circuit, Inc. v. United States*, 306 U.S. 208 (1939), as reasonably including interdependent conscious parallelism, note 31 *supra* at 683, no subsequent antitrust decision has so held. *See also* A. NEALE, *THE ANTITRUST LAWS OF THE UNITED STATES* 171-72, 180-82, 445-46 (1960).

33. Turner, *Economic Regulatory Policies*, 82 HARV. L. REV. 1207, 1225-31 (1969); Sherwood, *Separate Statement: White House Task Force Report*, 2 ANTIT. LAW & ECON. REV. 61 (Winter 1968-69). *See also* S. Smith, *supra* note 2, at 58.

precedent in support of their argument. Indeed, after considering both these approaches, a recent White House Task Force on Antitrust Policy rejected them and concluded that competition in highly concentrated industries could probably only be restored by enactment of new legislation empowering courts to dissolve leading firms in entrenched oligopolies.<sup>34</sup>

With respect to restoring competitive structure and performance to the automobile industry, however, there may be a viable alternative to either stretching the Sherman or Clayton Acts beyond the limits of precedent or relying upon new structural, antitrust legislation. A particular form of conduct, annual style change, may have largely determined this industry's anticompetitive structure and may as a result constitute an "unfair method of competition" under Section 5 of the Federal Trade Commission Act.<sup>35</sup> The Sherman and Clayton Acts, to be sure, proscribe several kinds of specific business behavior such as mergers and predatory or exclusionary practices by a dominant firm which can severely alter the structure of an industry, rapidly transforming an unconcentrated competitive structure to a concentrated oligopolistic one.<sup>36</sup> They fail, however, to reach other forms of "concentration-increasing" conduct which may amass most of an industry's total sales within a few firms and erect formidable entry barriers to newcomers.<sup>37</sup> Arguably, annual style change is conduct of this latter variety and should be condemned as "unfair" under Section 5.

The primary purpose of this Note, therefore, is to suggest strongly that the three leading firms in the automobile industry have engaged in conduct—annual style change—which ultimately transformed a competitive structure to an anticompetitive oligopolistic one in violation of Section 5 of the Federal Trade Commission Act. By way of a preliminary economic analysis, this Note will argue that annual style change has drastically increased market concentration, raised impenetrable barriers to entry, and directly contributed to this industry's record of noncompetitive market performance. Then, by analogizing the anticompetitive impact of annual style change to recognized anti-

34. The White House Task Force proposed a new statute, the "Concentrated Industries Act," which would prohibit any market structure in which, for a prescribed period of years, four or fewer firms had an aggregate market share of 70 per cent or more and industry sales exceeded \$500 million. Relief would take the form of dissolution to the point where no single firm would hold more than 12 per cent of total sales. THE NEAL REPORT, *supra* note 11.

35. 15 U.S.C. § 45 (1964).

36. Mueller, *supra* note 2, at 110.

37. See Smith, *supra* note 2, at 51-52 (advertising); Mueller, *supra* note 2, at 110 n.39 (exclusive distributorships).

## Automobile Industry

trust violations, as Section 5 cases seem to require, a *prima facie* case of illegality under Section 5 will be established.

What follows, however, is no substitute for a full-scale economic investigation and legal assessment of this practice by the FTC. Rather this Note is designed to suggest on the basis of available evidence the anticompetitive implications of annual automobile style change and the compelling need for the FTC to undertake a more thorough inquiry of the possible illegality of annual automobile style change under Section 5 of the FTC Act.

### II. Economic Impact of Annual Style Change in the Automobile Industry: A Preliminary Analysis

Before analyzing the anticompetitive impact of annual style change on structural concentration and barriers to entry and its impairment of this industry's competitive market performance, a distinction between style change and performance modifications must be drawn. As complex pieces of machinery, automobiles present manufacturers with practically unlimited opportunities for physical product modification in both appearance and performance. Their appearance may be drastically altered by varying the amounts of chromium and contour trim, changing the body shell patterns and radiator grill designs, and altering the range of colors and interior textures.<sup>38</sup> Their performance may be modified by structural changes which affect safety, durability, economy, reliability, carrying capacity, maneuverability, comfort, and convenience.

In this Note, "style changes" will refer solely to alterations in the appearance, as contrasted with modifications in the performance, of automobiles.<sup>39</sup> It is not unrealistic to distinguish style from performance changes, since the Bureau of Labor Statistics in the U.S. Department of Labor has for many years made this determination in compiling official consumer price indexes. Specifically, the BLS employs detailed

38. J. KEATS describes this process pithily:

The basic shell is bent a little bit this way, this year, and is bent slightly that way next year. The headlights are higher one year, lower the next, or grow in double . . . The door knobs are hidden, or recessed, or turned into buttons or bars . . . Tail fins grow higher, or maybe, grow in sidewise.

THE INSOLENT CHARIOTS 54-55 (1958). Annual style change may be accomplished either by altering existing models or by annually introducing "entirely new" model lines.

39. This distinction is not always easily drawn. E.g., has the migration of the gear shift from floor to steering column and, recently, back to floor again affected performance or appearance? INDUSTRIAL ORGANIZATION, *supra* note 2, at 423-24.

criteria for evaluating annual automobile model changes in order to adjust quoted prices of new automobiles for changes in "quality." In making these quality adjustments, it is compelled to distinguish between structural changes which affect safety, reliability, durability, economy, and comfort and "[s]tyle, or changes in appearance design solely to make the product seem new or different."<sup>40</sup> The BLS adjusts new automobile prices only for changes of the former variety.<sup>41</sup> Thus, a distinction between style and performance changes would appear to be empirically justifiable.

Annual model change has presumably consisted of both style changes and performance modifications. The industry's persistent refusal to provide inquiring Congressional committees with cost data, however, precludes a precise dichotomy between annual expenditures for style as contrasted with expenditures for performance alterations.<sup>42</sup> Nonetheless, several economists have testified that annual model change is predominantly oriented to changes in style rather than improvements in performance.<sup>43</sup> Indeed, they emphasize that, before the 1920's, models were changed every few years to incorporate significant technological breakthroughs, but that since then the rate of technological progress has declined while model changes have become an annual phenomenon.<sup>44</sup> Of course, the performance of automobiles has improved since the 1920's, but arguably not at a rate justifying annual model change. For example, in 1969, the Big Three spent \$1.56 billion or about \$195 per automobile to change its models; the Bureau of Labor Statistics reported, however, a net reduction in performance improvements of \$—3 per automobile, or approximately \$—23.9 million for the Big Three's combined output. Consequently, they spent more than a billion and a half dollars to make their 1969 models seem "new and different" in appearance. BLS performance data, computed for every model year since 1968, moreover, indicated that the 1969 results were not exceptional. The value of performance improvements in 1968 through 1971 models averaged \$5.50 per automobile each year, or less than 3 per cent of the Big Three's total model change expenditures

40. U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, GUIDELINES FOR ADJUSTMENT OF NEW AUTOMOBILE PRICES FOR CHANGES IN QUALITY OF PRODUCT (July 19, 1968).

41. The BLS does make adjustments, however, for those style changes previously offered as options and purchased by the majority of consumers, *id.* Presumably, this exception allows for explicit consumer preference.

42. See S. REP. NO. 627, 91st Cong., 1st Sess. 48-51 (1969).

43. SENATE SUBCOMM. ON ANTITRUST AND MONOPOLY OF THE COMM. ON THE JUDICIARY, STUDY OF ADMINISTERED PRICES IN THE AUTOMOBILE INDUSTRY, 85th Cong., 2d Sess. 81-87 [hereinafter cited as ADMINISTERED PRICES]; Lanzillotti, *supra* note 24, at 342-43.

44. ADMINISTERED PRICES, *supra* note 43, at 81-87; Lanzillotti, *supra* note 24, at 342-43.

## Automobile Industry

during that period.<sup>45</sup> In short, it would be reasonable to assume that annual model change has consisted primarily of changes in styling characteristics.

### A. *Style Change as a Market Weapon for Achieving Concentrated Economic Power*

The trend toward concentration in the automobile industry is unequalled in the history of American manufacturing.<sup>46</sup> From the inception of this industry in the late 1890's, the number of independent producers grew steadily to a peak of 88 in 1921.<sup>47</sup> Then, suddenly, about 1923, the number of automobile producers began to decline rapidly. In the course of three years, from 1923 to 1926, 43 firms left the market.<sup>48</sup> By 1935, only 10 firms were producing automobiles.<sup>49</sup> Today, 4 producers remain, with 3 firms accounting for 97 per cent of all domestic car production.<sup>50</sup>

Economists generally agree that four factors were primarily responsible for the rapid demise of competitors since the 1920's: components integration, large-scale advertising, franchised distribution, and a tremendous increase in capital requirements.<sup>51</sup> Arguably, these four decisive factors resulted from the development of an even more fundamental industry practice: annual style change. Significantly, it was in 1923, a near high-water mark in terms of the number of active

45. 1969 combined retooling figure for the Big Three obtained from STANDARD & POOR, *supra* note 18, at A170. Their combined output amounted to 7.98 million units in 1969. *Id.* at A161. The BLS reported a net performance increase in the 1969 models of \$1 which included, however, a \$4 expenditure to meet higher federal safety standards. Non-mandated performance changes, therefore, amounted to \$-3. U.S. DEPARTMENT OF LABOR PRELIMINARY REPORT ON PRICES OF NEW PASSENGER CARS, USDL-9994 (October 7, 1969). Per unit average performance improvement figure of \$5.50 for model years 1968-71 derived from the following BLS data: 1968 (Statement of Peter Henle, Chief Economist, Bureau of Labor Statistics, in *Prices of Motor Vehicle Safety Equipment, Hearings Before the Subcomm. on Executive Reorganization, of the Senate Comm. on Government Operations*, 90th Cong., 2nd Sess. 122-24 (1968)); 1969 (USDL-9994, October 7, 1969); 1970 (USDL-10-818, November 18, 1969); 1971 (USDL-11-535, November 6, 1970). Given annual sales by the Big Three at about 8 million units and average model change expenditures at about \$1.5 billion per year for the 1968-71 period, a \$5.50 performance increase represents 2.9 per cent of estimated total model change costs (8 mil.  $\times$  \$5.50/\$1.5 bil. = 2.9%). See also Ralph Nader's criticism that as a result of industry pressures the BLS overstates quality improvements and that industry expenditures attributed to safety features actually include the costs of styling changes. *Prices of Motor Vehicle Safety Equipment, supra*, at 60-70.

46. Lanzillotti, *supra* note 24, at 312.

47. R. EIRSTEN, *THE AUTOMOBILE INDUSTRY* 176 (1928). The depression of 1921-1922 and consequent decline in automobile demand brought this figure down to 83 by the end of 1922. *Id.* at 176, 187.

48. *Id.* at 176.

49. ADMINISTERED PRICES, *supra* note 43, at 8-9.

50. See note 18 *supra*.

51. See, e.g., WEISS, *supra* note 20, at 331-32, 336-39; Lanzillotti, *supra* note 24, at 321-34; Vatter, *supra* note 22, at 224-27.

automobile producers, that General Motors introduced annual change.<sup>52</sup> By 1928, it had become the industry practice.<sup>53</sup>

Prior to the introduction of annual style change in 1923, entry into the automobile industry was relatively easy, exits were insubstantial in number, and concentration was consequently low.<sup>54</sup> Scale economies in components integration provided no significant deterrent to the large number of early entrants to this industry.<sup>55</sup> Similarly, entry was not precluded by a need to engage in massive advertising.<sup>56</sup> Moreover, the availability of standardized interchangeable replacement components up until the 1920's obviated any need for integration forward into extensive networks of franchised dealers with specialized maintenance capabilities.<sup>57</sup> Thus, capital requirements for entry prior to the 1920's were negligible. The industry's emphasis upon external economies of independent parts manufacturers rather than internal scale economies of integrated fabrication, for example, greatly reduced the amount of initial investment required for operation.<sup>58</sup> The Ford

52. A. SLOAN, MY YEARS WITH GENERAL MOTORS 167 (1964); L. SEITZER, A FINANCIAL HISTORY OF THE AUTOMOBILE INDUSTRY 212 (1928). See also GM's account of its introduction of a "new dynamic product concept" in the early 1920's, i.e., annual style change. GENERAL MOTORS, THE AUTOMOBILE INDUSTRY: A CASE STUDY IN COMPETITION 4-7 (1968).

53. Menge has argued that since the mid-1920's "[s]lowly and inexorably a code of behavior based upon rapid periodic style change" drove "the small producers from the industry." *Style Change Costs as a Market Weapon*, 76 Q.J. OF ECON. 632, 634 (1962).

54. See generally Lanzillotti, *supra* note 24, at 314. In 1915, 3-firm concentration stood at approximately 50 per cent. FTC REPORT, *supra* note 21, at 29. In only one year (1910) did the rate of failure greatly exceed the rate of entry. It has been argued that this deviation from an otherwise uniformly positive entry-exit ratio up until the early 1920's was due to the refusal by many producers to change from 1- and 2-cylinder engines to the 4-cylinder version. ADMINISTERED PRICES, *supra* note 43, at 4.

55. INDUSTRIAL ORGANIZATION, *supra* note 2, at 296. Automobile producers were primarily "assemblers" of bodies and engines purchased from firms specializing in automotive parts production. *Id.*; Vatter, *supra* note 22, at 216-17. Since producers had access to parts from external suppliers, they were not compelled to integrate backward into components production. Consequently, most of them engaged exclusively in assembly operations, which required only minimal levels of output for optimal efficiency (i.e., lowest per unit production costs). INDUSTRIAL ORGANIZATION, *supra* note 2, at 296.

56. Since the designs of most automobiles produced before 1923 remained basically unchanged for substantial periods of time, the public became familiar with them. Thus, there was little to be gained by repeatedly calling the public's attention to the outstanding features of unchanged models. See generally ADMINISTERED PRICES, *supra* note 43, at 96. Total magazine advertising expenditures by all passenger car manufacturers in 1915, for instance, amounted to less than \$3 million. ERSTLIN, *supra* note 47, at 147.

57. In fact, automobile manufacturers during this period generally distributed their products to independent wholesalers and retailers who resold to the public. FTC REPORT, *supra* note 21, at 106-10.

58. Engaged only in the assembly and sale of completed vehicles, early producers were therefore able to shift the financial burdens of automobile production to owners of already existing capital equipment: the specialized parts manufacturers. SEITZER, *supra* note 32, at 19; Lanzillotti, *supra* note 24, at 314. The assemblers were able to reduce their capital requirements further by purchasing parts on credit and then selling cars to dealers on a cash basis. SEITZER, *supra* note 32, at 20-21; FTC REPORT, *supra* note 21, at 108. Many of these firms were able to lower start-up costs even further by leasing rather than purchasing assembly facilities. Vatter, *supra* note 22, at 217.

## Automobile Industry

Motor entry was typical. The Company was incorporated in 1903 with only \$28,000 in cash.<sup>59</sup> This ease of entry was reflected in industry concentration. Not until the 1920's did the three leading firms account for much more than half of total sales.<sup>60</sup>

Product variation was not new to the automobile industry in 1923. From the very beginning, it had served as a key element of competition among the many early producers.<sup>61</sup> But pre-1923 variations differed from subsequent product changes in two significant ways: they occurred less frequently, and they generally represented substantial improvements in performance capabilities rather than mere changes in style.<sup>62</sup> Thus, before 1923, the frequency of model change was closely geared to the rate at which technological breakthroughs were achieved; these occurred every four or five years.<sup>63</sup> Moreover, it will be demonstrated that this rate of product change enabled independent parts manufacturers to supply small volume assemblers with efficiently produced and improved components. The advent of annual product variation, however, drastically altered this process.

In 1923, General Motors introduced annual style change.<sup>64</sup> Whether by design or mere accident, GM's device accomplished much more than planned obsolescence: it eliminated smaller producers unable or unwilling to restyle their products every year. As the first company to employ this market weapon, GM increased its share of total industry sales dramatically from 13 to 43 per cent in the 5 years between 1922 and 1927.<sup>65</sup> Chrysler, after its well-financed entry in 1923, quickly imitated GM's restyling policy and increased its market share to 6 per cent by 1927.<sup>66</sup> Ford, at first ignoring the practice of changing styles annually,

59. Of the \$100,000 in stock originally subscribed to by a dozen people, \$72,000 was paid in the form of patents, machinery and supplies. *SLUTZKE, supra* note 52, at 88 n.5.

60. *ERSTEIN, supra* note 47, at 163-64, 176. Three-firm concentration derived from FTC REPORT, *supra* note 21, at 29. In 1911, General Motors and Ford accounted for only 38 per cent of passenger car production. By 1929, they shared 64 per cent of sales, and together with Chrysler (which entered in 1923), 72 per cent of the industry. *Id.*

61. See, e.g., *ERSTEIN, supra* note 47, at 87-93; Lanzillotti, *supra* note 21, at 314-15.

62. See p. 576 *supra*. There was a substantial variation in performance alternatives prior to 1923. In 1910, for example, consumers could choose among electric, steam and gasoline vehicles, which offered widely divergent performance capabilities. Among gasoline powered cars, for instance, there were one, two, three, four and six cylinder engines available. *ERSTEIN, supra* note 47, at 87-88; *SLUTZKE, supra* note 52, at 18.

63. See notes 43-44 *supra*. See also *WISS, supra* note 20, at 312-43.

64. By 1920, the demand for new automobiles had been largely saturated and had become a replacement demand initially sensitive to the alternative supply of used cars and costs of repairs. Accordingly, price reductions were less effective in generating increased purchases as new car demand became less elastic. *WISS, supra* note 20, at 332-34; Vatter, *supra* note 22, at 218. A new market device was required to coax additional purchases from consumers by persuading them that their present cars were obsolete.

65. Computed from data contained in *SLUTZKE, supra* note 52, at 213; FTC REPORT, *supra* note 21, at 29; Lanzillotti, *supra* note 24, at 319.

66. FTC REPORT, *supra* note 21, at 29; 549-51. Chrysler's successful entry was a function

suffered an equally dramatic decline in its market share during this same period, falling from 51 per cent in 1922 to 9 per cent by 1927.<sup>67</sup> In 1928, it adopted an annual restyling policy which within two years boosted Ford's share of the market to 31 per cent.<sup>68</sup> While aggressively pursuing annual style change, G.M., Chrysler and Ford increased their collective share of industry sales from less than 65 per cent in 1923 to more than 90 per cent by 1935.<sup>69</sup>

An inevitable result of the drive to produce "all-new" cars annually was an industry trend toward components integration. Previously, producers had attained optimal efficiency at low output volumes by assembling basically interchangeable body and engine components purchased from external suppliers.<sup>70</sup> By contrast, after 1923 the annual need to produce uniquely styled vehicles, including redesigned bodies and rearranged (although not necessarily improved) engines, caused producers to integrate body and engine production within their own plants.<sup>71</sup>

This shift from assembly of body and engine components to their integrated fabrication had a substantial impact upon the scale of production necessary for optimum efficiency as measured in terms of lowest per unit production costs. For a firm engaged in both mass production and assembly of annually modified bodies and engines, the optimal output was from 3 to 5 times greater than that required for mere assembly operation.<sup>72</sup> After 1923, an integrated firm which changed its styles annually needed a volume of at least 250,000 cars

both of its sizeable financial resources and its early acquisition of a large integrated plant and powerful dealer organization. Weiss, *supra* note 20, at 338.

67. Lanzillotti, *supra* note 24, at 319; FTC REPORT, *supra* note 21, at 29.

68. BARRIERS, *supra* note 3, at 298 (1962). Ford had frozen the design on its "Model T" since 1909 and had concentrated its energies on mass production at low cost. Until the early 1920's, its efforts were completely successful as measured by its increase in market share from 9 per cent in 1909 to 55 per cent in 1921. With the introduction of its "Model A" in 1928, Ford managed briefly to regain its leading position in 1929-30; but then GM took and kept the lead thereafter. SELTZER, *supra* note 32, at 120-24; Lanzillotti, *supra* note 24, at 318-20.

69. FTC REPORT, *supra* note 21, at 29.

70. As significant technological breakthroughs were achieved, performance modifications had been made by ordering from independent components manufacturers specially-tooled parts which were then added to the basic body and engine assemblies. See Lanzillotti, *supra* note 24, at 314; Vatter, *supra* note 22, at 216-17.

71. This is not intended to suggest that all backward integration occurred after 1923. On the contrary Ford through internal growth and General Motors by merger had early begun integration of components production. See SELTZER, *supra* note 32, at Ch. 3 and 4. What it does imply, however, is that whereas before 1923 components integration did not affect entry or survival conditions appreciably, after 1923 it became an absolute necessity. Consult INDUSTRIAL ORGANIZATION, *supra* note 2, at 296.

72. The critical stage in plant economies is found in the production of body and engine components, not in assembly operations. Optimal size for assembly purposes ranges from 60,000 to 180,000 units per year. Integrated optimal production scale requires volumes of from 300,000 to 600,000 units per year. BARRIERS, *supra* note 3, at 245.

## Automobile Industry

a year to operate at maximum efficiency.<sup>73</sup> At lower outputs, it would experience production costs substantially higher than larger volume producers.

One of the most serious disadvantages for producers operating at below the optimal scale of output required for style changes was the premature scrapping of expensive tools and dies. Assume, for example, that prior to 1923 General Motors and firm X in Figure I had identical

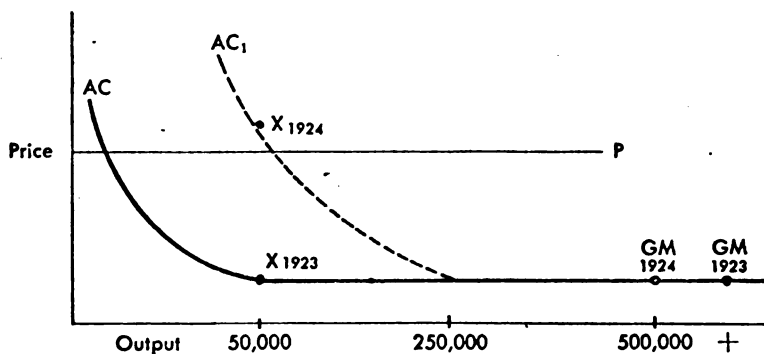


FIGURE I

cost curves (AC) but dissimilar outputs.<sup>74</sup> GM's production exceeded 400,000 units; while firm X produced a little more than 50,000 vehicles a year. Both producers, therefore, had achieved the minimum level of output necessary for optimally efficient assembly operations (50,000 units in 1923). Assume also that prices were constant at  $p$ .

In 1923, when it initiated annual style change, GM purchased at great expense the special tools and dies required for completely restyling its products. It found, however, that after the production of approximately 250,000 cars this equipment was physically deteriorated and could be fully amortized.<sup>75</sup> In 1923, it exhausted three full sets of dies and tools in producing a record 775,000 automobiles (point GM<sub>1923</sub> in Figure I).<sup>76</sup> Thus, it could replace the 1923 dies and tools

73. Estimate by Paul Hoffman of Studebaker Corp., 21 TNEC HEARINGS 11218 (1941).

74. This graphic analysis draws heavily from Menge, *supra* note 53, at 634-43.

75. The average life of dies and special tools during this period approximated 250,000 units. See note 73 *supra*. Of course, if GM had produced 300,000 cars that year, it would have only partially exhausted a second set of equipment. Nonetheless the premature scrapping costs could have been spread over a larger volume of automobiles than if it had produced less than 250,000. Hence, its per unit scrapping costs would have been substantially lower if it exceeded rather than fell below this production level.

76. General Motors output amounted to 442,981 units in 1922; 774,617 in 1923. EPSTEIN, *supra* note 47, at 328.

with identical equipment or, at no extra cost, with dissimilar equipment. Consequently, GM changed the style characteristics of its 1924 models without increasing its costs, thereby remaining on AC in Figure 1 (point  $GM_{1924}$ ).

In order to compete with GM's restyled 1923 models, firm X also purchased the expensive tools and dies necessary for the integrated production of uniquely styled vehicles. But unlike GM, it was unable to amortize this equipment over a year's production. Since dies and tools deteriorated only after the production of 250,000 units, its output in 1923 of 50,000 (point  $X_{1923}$ ) consumed but one-fifth of their physical usefulness. Consequently, it could bring out a newly styled model in 1924 only by scrapping equipment which was not yet worn out and could only be partially amortized. As a result, it would experience higher average costs in 1924 (*i.e.* curve  $AC_1$  in Figure 1) for any level of output below 250,000 units. Assuming that its 1924 output did not exceed that of the prior year, its costs exceeded price at point  $X_{1924}$ , and it was forced out of the market.<sup>77</sup>

After 1923, therefore, survival as a style-change manufacturer required construction of a plant capable of producing at least 250,000 automobiles per year from internally manufactured and annually altered components. Significantly, only two of the 81 firms independent of Ford and GM which were operating at the beginning of 1923 ever reached the 250,000 minimum optimal integrated level of output.<sup>78</sup> These two companies, Chrysler and Hudson (which later merged

77. The slope of  $AC_1$  was of critical importance for small volume producers and potential entrants after 1923. A steeper slope relative to AC indicated higher average costs due to style change expenses for every level of output below 250,000 units, the minimal scale for optimal efficiency in integrated production. Primarily, the slope of  $AC_1$  was the product of additional costs incurred in the premature scrapping of special tools and dies. These costs, of course, were directly related to the expense of procuring new equipment. Significantly, the costs of special tools, dies and jigs have risen dramatically since 1923. Although about the same number of cars were sold in 1923 and in 1940, for example, special tools cost ten times as much in 1940. Again, about twice as many cars were sold in 1957 as in 1923, but tooling costs had increased 100 times. Weiss, *supra* note 20, at 336. As noted, by 1970, the Big Three were spending \$1.5 billion each year for special tools and dies. Combined expenditures for special tools, dies, jigs and fixtures by the Big Three amounted to \$1,539 billion in 1969. STANDARD & POOR, *supra* note 18, at A170. Sen. Nelson estimated the cost of annual style changes at \$1.5 billion. N.Y. Times, Aug. 5, 1970, at 28, col. 3.

78. Chrysler has exceeded this sales volume for every year since 1928 with but one exception, in 1932; Hudson attained this output from 1924 through 1929, but then dropped below it during the 1930's. In 1954, Hudson merged with Nash to form the American Motors Corporation. AUTOMOTIVE NEWS, ALMANAC ISSUE 72 (1951).

It should be emphasized that after General Motors introduced annual restyling, abstention from this practice was apparently not perceived as a realistic alternative by smaller automobile producers. Menge, *supra* note 53, at 643. A possible explanation is that once all three leading companies began saturating the market after the 1920's with annually restyled cars, a small volume of standard-styled vehicles by comparison might have appeared obsolete.

## Automobile Industry

with Nash to form American Motors), would become the sole competitors of Ford and GM by the 1960's. Neither Kaiser-Frazer nor Crosley, the only firms to attempt entry after 1923, ever achieved this production scale.<sup>79</sup>

Annual style changes imposed a second burden upon smaller automobile producers: large-scale annual investments in advertising. Before 1923, automobile designs remained basically unchanged for several years.<sup>80</sup> With the introduction of annual style change, however, producers were compelled to undertake annual advertising campaigns to impress consumers with the unique appearance of annually altered automobiles.<sup>81</sup> The style change race had engendered an advertising competition in which only the financially resourceful could remain.<sup>82</sup> Moreover, smaller producers were seriously disadvantaged because of the scale economies associated with extensive promotional efforts. To accomplish the same or even sparser market coverage, small volume producers spent considerably more per unit of output than did large volume manufacturers. For example, GM was able to obtain 10 times more advertising space in 1930 than did Nash, a lower volume firm; at half of the latter's per car cost.<sup>83</sup> Returning to the analysis accompanying Figure I, therefore, it can be argued that the need to engage in large scale advertising annually, no less than the need to scrap expensive dies prematurely, increased average costs and consequently the slope of AC<sub>1</sub>, thereby driving scores of smaller producers from the market.<sup>84</sup>

The annual style change policy begun by GM also required a national system of adequately financed and strategically located dealers with

79. AUTOMOTIVE NEWS, ALMANAC ISSUE 60 (1970).

80. See note 56 *supra*.

81. See ADMINISTFRED PRICES, *supra* note 43, at 96.

82. Advertising expenditures increased dramatically as producers attempted to convince consumers of the obsolete character of older models which only a year earlier had been advertised as the ultimate in new design. *Id.* Consequently, industry promotional expenditures rose rapidly during the 1920's from approximately \$5 million in 1922 to nearly \$25 million by 1930. Nor was this increase due to an expansion in automobile sales. Output remained about the same for both years. AUTOMOTIVE NEWS, ALMANAC ISSUE 1931. By 1969, industry advertising expenditures amounted to approximately \$400-\$600 million. See note 163 *infra*.

83. In 1930, GM secured nearly \$20 million worth of advertising coverage at a per car cost of \$17. By comparison, Nash obtained less than \$2 million in coverage at a cost of \$34 per car. FTC REPORT, *supra* note 21, at 714-15; WEISS, *supra* note 20, at 359.

84. Smaller producers were unable to spread advertising and retooling expenses over the large volumes of output enjoyed by the Big Three. Consequently, their advertising and retooling costs per unit of output (i.e. average costs) were substantially higher than those of GM, Ford and Chrysler. Compelled to charge higher prices to cover higher average costs, these smaller firms found themselves priced out of the market. WEISS, *supra* note 20, at 340-47.

unique service facilities. Prior to the advent of periodic restyling there was little need for manufacturers to establish retail outlets with specialized maintenance capabilities.<sup>85</sup> Independent retailers provided adequate sales and service for a wide variety of automobiles.<sup>86</sup> By contrast, the need to differentiate the appearance of automobiles annually and the consequent decline in the interchangeability of components required the establishment of unique nationwide service organizations.

The need to establish nationwide service networks posed not only a great financial burden for smaller producers; it also involved significant economies of scale. The minimum volume sufficient to permit the maintenance of a nationwide system of dealerships with servicing facilities probably ranged from 100,000 to 150,000 units per year.<sup>87</sup> As a certain minimal sales volume was necessary to maintain a solvent dealer, producers with smaller annual outputs would have experienced severe difficulties in retaining an adequate number of dealers for national coverage. Significantly, few producers other than the Big Three ever reached this volume after 1923.<sup>88</sup> Consequently, their average distribution costs were substantially higher than those of GM, Ford and Chrysler. Moreover, as the Big Three expanded their dealer networks, smaller producers found it increasingly difficult to establish and maintain retail outlets without experiencing increased per unit costs.<sup>89</sup>

The need to integrate forward into retail distribution, therefore, was another factor attributable to style change that substantially raised the amount of capital necessary for successful entry and survival in the automobile manufacturing industry. Each of the three factors necessary for annual style change involved tremendous capital investments of hundreds of millions of dollars.<sup>90</sup>

85. See p. 578 *supra*.

86. See note 57 *supra*.

87. Although this estimate was derived during the early 1950's it is most likely also applicable to periods before and after. BARRIERS, *supra* note 3, at 301-06. WEISS, *supra* note 20, at 343.

88. Of the 21 producers other than the Big Three operating during the years 1931-41, for example, only Studebaker reached this output for two years (1940-41). AUTOMOTIVE AND AVIATION INDUSTRIES, March 15, 1946, at 88.

89. As one economist has observed: "[b]y saturating an area with dealers handling their own respective products exclusively," the Big Three "can effectively deny their smaller existing and potential competitors access to the best sites and most efficient retailers, thus raising the per-unit sales and distribution costs of these actual and potential competitors. . . ." Mueller, *Sources of Monopoly Power: A Phenomenon Called "Product Differentiation,"* 2 ANTIT. LAW & ECON. REV. 59, 80 (Summer 1969).

90. "The most important factor that caused the defunct companies to fail was the lack of capital to meet the increasing emphasis and staggering cost of frequent product changes and other product differentiation policies and practices of the Big Three." Lanzillotti, *supra* note 24, at 348.

## Automobile Industry

This brief analysis indicates that the automobile industry became increasingly concentrated following the introduction of annual style change in 1923. There are, however, other hypotheses which might explain this phenomenon. For example, declining economic conditions and a rise in automobile mergers might have contributed to increased industry concentration.<sup>91</sup> But these developments could not have been the primary cause of the dramatic change in this industry's structure. For example, the rate of attrition for automobile firms during the depressed 1930's was only slightly greater than in the booming 1920's.<sup>92</sup> Moreover, the predominant number of firms which left the market did so because of failure rather than combination.<sup>93</sup>

Instead, this economic analysis suggests that four factors (components integration, formidable advertising, franchised distribution, enormous capital requirements) were the direct cause of concentration and that each of these developments was linked in turn to the introduction of annual style change. Other hypotheses, however, could aid in explaining the emergence of these four factors. Substantial fluctuations in economic conditions following World War I, for example, may have contributed in part to the industry's movement toward captive production and distribution facilities.<sup>94</sup> On the other hand, these four developments cannot be accounted for, as some have urged, by a "drive for efficiency" in performance improvement.<sup>95</sup> The foregoing analysis demonstrates that without the need to restyle annually, optimal efficiency in the production of automobiles with increasingly improved performance capabilities had been reached by many firms in the industry. Once annual style change became the industry code of behavior, however, efficiency in the production of annually restyled vehicles made these four developments almost inevitable.

On balance, therefore, this brief analysis indicates that although other hypotheses might assist in the explanation of how this industry became highly concentrated in a short period of time, annual style change might well have been its fundamental cause.

91. See, e.g., *ADMINISTERED PRICES*, *supra* note 43, at 8-9; *ERSTEIN*, *supra* note 47, at 187.

92. *Lanzillotti*, *supra* note 24, at 321.

93. *Id.*

94. See *SELTZER*, *supra* note 32, at 114-20, 191-97.

95. See, e.g., *GENERAL MOTORS*, *supra* note 52, at 71-75 (1968). GM argues that these developments resulted from a drive for efficiency in the production of automobiles. Yet it admits that the concept of efficiency is not fixed and depends, *inter alia*, upon "product characteristics." *Id.*, at 73 n.36. In short, these developments were engendered not by any vague pursuit of "efficiency" but rather by a fundamental change in product policy, *i.e.*, the introduction of annual restyling.

**B. Style Change as a Market Weapon for Preserving Concentrated Economic Power: Barriers to Entry**

Style change has proved to be as effective a market weapon in preserving concentrated economic power in the automobile industry, it can be argued, as it had been in achieving it.<sup>96</sup> By causing formidable entry barriers to be raised, style change insured that the vacancies created by the exit of nearly one hundred firms were not filled by newcomers.

The same four factors which by eliminating earlier producers led to concentration seem also to have erected insurmountable barriers to potential entrants. The magnitude of these barriers can be measured in at least three separate ways. First, the experience of the only firm seriously to attempt entry since 1923, Kaiser-Frazer, can be evaluated. Second, industrial studies of the automobile manufacturing process can reveal the minimum scale of operations, minimum promotional expenditures, and minimum capital resources necessary for entry today. Finally the estimates of firms which have recently contemplated (but decided against) entry may be examined.

Since 1923, a handful of attempts at entry, all unsuccessful, have been undertaken.<sup>97</sup> Of these, only the Kaiser-Frazer endeavor of 1945-1954 could be considered a serious challenge.<sup>98</sup> Kaiser had already successfully broken into two of the most highly concentrated industries in the American economy (aluminum and steel). Given a most propitious time of practically insatiable postwar demand, its venture into automobiles seemed assured of success. It commanded the talents of experienced executives, the backing of a multi-million dollar industrial empire, and the acquired production and distribution facilities of an operative automobile organization (Graham-Paige Motors). Through stock offerings, loans from private and government agencies, and financial resources derived from other Kaiser enterprises, it raised more than \$200 million. Within a record time of 11 months, it produced a car which was praised for both its engineering achievement and for its style.<sup>99</sup> Its market share rose to nearly 5 per cent of industry

96. See Vatter's account of closure of entry into this industry, *supra* note 22.

97. Unsuccessful attempts were made, for example, by Durant Motor Co. of Indiana (1924), Rollin Motors Co. (1924), Klieber Motor Co. (1926), Falcon Motors Corp. (1927), Crosley Motors, Inc. (1939), and Kaiser-Frazer Corp. (1945). EPSTEIN, *supra* note 47, at 377-82; ADMINISTERED PRICES, *supra* note 43, at 82.

98. WEISS, *supra* note 20, at 338-39. For a general account of the Kaiser venture into automobiles, see also Lanzillotti, *supra* note 24, at 328-29; Vatter, *supra* note 22, at 230-33; Kaiser-Frazer: "The Roughest Thing We Ever Tackled," 44 FORTUNE 74 (July 1951).

99. FORTUNE, *supra* note 98, at 156, 158.

## Automobile Industry

sales by 1948.<sup>100</sup> Yet, by 1949, the Kaiser venture was doomed to failure. Its share of sales fell back to a little more than 1 percent, and by 1954, it had ceased production.<sup>101</sup>

The reason for this sudden reversal in Kaiser's market position after 1948 has been succinctly stated by economists: its survival required the launching of a new model, yet it was unable to finance a restyled automobile for 1949.<sup>102</sup> Although sales in 1948 had reached 181,000 units, that volume was insufficient to finance formidable retooling and advertising costs.<sup>103</sup> As Kaiser Industries reported later:

To stay in the market, Kaiser-Frazer now had to play the "new models" game for the first time; new models took tools; tools took major financing. An attempt was made to sell a third stock issue to the public in 1948, but that ran aground . . . .<sup>104</sup>

Consequently, it was forced to sell its 1948 models again in 1949 and 1950. In 1951, it managed to produce a newly styled model; but by then its output was far below the minimum volume necessary for optimum efficiency.<sup>105</sup> As a result, higher per unit production costs forced its prices above those of the Big Three.<sup>106</sup> Thereafter, its sales plummeted, and it accumulated uninterrupted losses until it withdrew from the market in 1954, with an earned surplus deficit amounting to more than \$100 million.<sup>107</sup>

Evaluation of the short-lived Kaiser entry suggests that it suffered in varying degrees all the disadvantages which had contributed to the elimination of the earlier producers.<sup>108</sup> Formidable scale economies in production and retail distribution, massive promotional activities, and enormous capital requirements were the principal factors accounting for its demise.<sup>109</sup> As evidenced by its inability to finance a 1949 model, its 1948 record volume of 181,000 units was below the minimum optimal scale for integrated production, which had been estimated at about 250,000 for the early 1940's.<sup>110</sup> During succeeding years, how-

100. AUTOMOTIVE NEWS, ALMANAC ISSUE 60 (1970).

101. *Id.*

102. See Lanzillotti, *supra* note 24, at 328-29.

103. *Id.*; see also note 72, *supra*.

104. KAISER INDUSTRIES CORP., THE KAISER STORY 45 (1968).

105. After failure of the public issue in 1948, Kaiser went to the banks which had helped fund its breakthrough into aluminum and steel, but they considered the risks prohibitive and refused further participation. Lanzillotti, *supra* note 24, at 329.

106. FORTUNE, *supra* note 98, at 161. In 1950, it lost \$13 million on its sale of 151,000 automobiles. *Id.*

107. MOODY'S INDUSTRIAL MANUAL 1616 (1955).

108. INDUSTRIAL ORGANIZATION, *supra* note 2, at 285-87.

109. *Id.* See also Lanzillotti, *supra* note 24, at 328-29.

110. See note 73 *supra*.

ever, it suffered further scale economy disadvantages as its volume dropped below the minimum 100,000-150,000 unit volume required for optimal efficiency in retail distribution.<sup>111</sup> To meet the retooling and readvertising requirements of annual style change, moreover, Kaiser would have needed an additional \$150 million, which would suggest a total capital resources entry barrier exceeding \$350 million.<sup>112</sup> In fact, this \$350 million estimate is probably too low for a potential entrant today since Kaiser enjoyed several advantages which are no longer accessible to a newcomer in the 1970's.<sup>113</sup> Reviewing the failure of Kaiser's automobile venture despite its sizeable resources and its record as one of the country's most formidable challengers of concentrated industries, one industrial economist concluded in 1966: "The idea of any further entry into the industry today seems preposterous."<sup>114</sup>

Subsequent studies of the Kaiser-Frazer attempt and the recent operations of the Big Three now afford a more precise determination of the actual magnitude of barriers to entry into this industry, barriers which may be largely attributable to annual style change. In 1970, it would cost a company \$779 million to enter the automobile industry. The costs of annual style change capability, it is estimated, account for fully \$724 million, or more than 90 per cent of this figure.<sup>115</sup> More-

111. AUTOMOTIVE NEWS, ALMANAC ISSUE 60 (1970).

112. As sales fell, Kaiser's dealers were unable to meet their overhead costs and declined from a high of 4700 in 1948 to 2700 in 1951, scarcely 200 more than the number considered minimally necessary for national coverage. WEISS, *supra* note 20, at 343; FORTUNE, *supra* note 98, at 158. With regard to capital required for annual restyling and advertising, Kaiser later concluded conservatively that it needed at least \$150 million more in equity resources. FORTUNE, *supra* note 98, at 161. When added to the more than \$200 million Kaiser actually raised, this would indicate a capital requirement of more than \$350. See p. 586 *supra*.

113. For example, through its acquisition of Graham-Paige Motors, it was able to obtain an operational manufacturing and dealer organization. By contrast, today's entering firm would have to construct both *de novo*. The production facilities of the earlier independents have either been sold to the four domestic producers or scrapped; their retail networks have long since disappeared. ADMINISTERED PRICES, *supra* note 43, at 14. Absent the opportunity to acquire existing facilities, however, newcomers would require from an estimated \$779 million to \$2 billion to build both systems at the minimum optimal volume necessary for annual style changes (*i.e.*, 300,000 units). See notes 113, 123 *infra*.

114. WEISS, *supra* note 20, at 339.

115. Yearly restyling requires efficient assembly and integrated components production facilities at a minimum plant investment of \$250 million. Bain estimates that efficient production and assembly of body and engine components would require a minimum plant capacity of 300,000 units, at a cost of \$250 million. INDUSTRIAL ORGANIZATION, *supra* note 2, at 286. Annual restyling also necessitates integration forward into a nationwide distribution network costing no less than \$326 million. This was Romney's estimate of the capital required by a 250,000 unit firm in 1958 to establish a national distribution system. ADMINISTERED PRICES, *supra* note 43, at 16 n.28. Finally, annual style change would compel retooling and readvertising at a minimum annual rate of \$180 million and \$23 million, respectively. This annual retooling figure assumes output at the minimum efficient level of 300,000 units. It was obtained by multiplying the per unit full factor costs for style change (*i.e.* including the actual added production costs of producing the redesigned vehicle) as calculated at \$600 by Fisher, Griliches & Kaysen, *The Costs of Automobile Model Change During a Decade*,

## Automobile Industry

over, to merely recapture its \$779 million investment, an entering firm would need to secure from 4 to 8 per cent of total industry sales for an efficient scale of operations.<sup>116</sup> In addition, it would encounter for 5 to 10 years a net price disadvantage of at least 5 per cent of factory price due to higher per unit countervailing advertising expenses and price concessions necessary to maintain a solvent national dealership system.<sup>117</sup>

By contrast, had the industry not been restructured by annual style change, it is estimated that entry in 1970 could have been achieved for \$35 million, or less than one-tenth as much as the actual capital requirement.<sup>118</sup> Absent annual style change, an entrant could operate efficiently with an estimated 0.7 to 2.1 per cent of the market<sup>119</sup> without encountering promotional or distributional price disadvantages.<sup>120</sup> To the extent, therefore, that style change transformed the condition of entry into this industry, barring all but completely integrated firms able and willing to spend not merely \$35 million but \$779 million, it

70 J. Pol. Econ. 433, 450 (1962), by the output  $(300,000 \times \$600 = \$180 \text{ million})$ . The re-advertising amount was obtained by multiplying the current \$75 per car advertising expenditure of the Big Three (see Lanzillotti, *supra* note 24, at 343) by the minimum efficient output level of 300,000 units = \$22.5 million. Realistically, a new firm would probably expend at least twice that amount overcoming consumer loyalty to current automobile models engendered by decades of advertising by established sellers. In 1958, Romney then president of American Motors estimated that a plant with a 250,000 unit output would require \$35 million for annual advertising. ADMINISTERED PRICES, *supra* note 43, at 17, table I. The costs of annual style change capability are \$779 million less \$35 million, or \$724 million. See note 118 *infra*.

116. See note 22 *supra*.

117. *Id.*

118. Absent the need for an entering firm to restyle annually and assuming the existence of independent parts manufacturers and independent distributors, the formidable costs of components production and of distribution would have been borne not by the entrant but by these specialized independent enterprises. Thus, an assembler of automobiles could have accomplished entry under these hypothetical conditions by merely constructing an assembly plant at a cost of \$50 million and by spending an additional \$5 million for introductory promotion. On the basis of the Kaiser experience and from studies of the Big Three's manufacturing operations, Bain has estimated that an assembler could operate with optimal efficiency at a minimum output of 60,000 vehicles per year. BARRIERS, *supra* note 3, at 245. See also ADMINISTERED PRICES, *supra* note 43, at 14. The cost of an assembly plant one-fifth as large as that minimally required for annual restyling (*i.e.*, 300,000 units) has been assumed to be one-fifth of the cost of the latter facility, or \$50 million. See note 115 *supra*. Assuming that a new entrant would engage in countervailing advertising at a rate equal to that of the Big Three, the cost of such advertising for the first year may be computed by multiplying the average Big Three per car advertising expenditure of \$75 (see note 115 *supra*) by the minimum efficient level of output for an assembler of 60,000 units:  $\$75 \times 60,000 = \$4.5 \text{ million}$ . Assuming further, however, that the assembler's product would remain basically unchanged pending major technological breakthroughs, subsequent advertising expenditures should decline as the public becomes acquainted with the characteristics of the assembler's unchanged model. See note 56 *supra*. But these conditions no longer obtain: entry as an assembler has not been feasible since the 1920's.

119. These percentages were derived by calculating the share of total industry sales in 1969 (8.38 million per note 18 *supra*) represented by the minimum efficient scale for assembly operation, estimated at from 60,000 to a high of possibly 180,000 units per year. BARRIERS, *supra* note 3, at 245.

120. See note 22 *supra*.

raised the capital costs of entry considerably more than tenfold.<sup>121</sup> To the extent that it required entrants to capture a formidable segment of industry sales and to endure substantial price disadvantages and hence losses for up to a decade, it made the risks of entry prohibitive.

A large number of companies have recently developed alternative automobile propulsion systems utilizing gasoline, electricity, steam and freon; but, significantly, not a single firm has attempted entry. Representatives of these companies have generally agreed in their testimonies before Congress that absent major antitrust action or some form of government subsidization, entry by firms offering innovative alternatives is economically infeasible.<sup>122</sup> Estimates made by these prospective entrants suggest that style change barriers today are higher than the foregoing analysis would suggest.<sup>123</sup>

121. This is a conservative estimate of the entry barriers attributable to annual style change. For example, Bain argues that an entering firm would probably encounter break-in losses of \$15 million annually for a ten year period, or \$150 million. INDUSTRIAL ORGANIZATION, *supra* note 2, at 286. Romney's estimate of the first year capital requirements necessary for a 250,000 unit integrated operation in 1958 amounted to \$502.2 million. This figure included \$326.2 million to establish a national dealer system. ADMINISTERED PRICES, *supra* note 43, at 16 n.28. See also Sen. Morse's statement as to a subsequent increase in Romney's estimate to roughly \$2 billion. *Hearings Before the Senate Select Comm. on Small Business on the Status and Future of Small Business in the American Economy*, 90th Cong., 1st Sess., pt. 2, at 431 (1967).

122. See, e.g., *Joint Hearings on the Automobile Steam Engine and Other External Combustion Engines* [hereinafter cited as *J. Hearings—Steam*], 90th Cong., 2nd Sess. (1968); *Electric Vehicles and Other Alternatives to the Internal Combustion Engine*, *Joint Hearings Before the Senate Comm. on Commerce and the Subcomm. on Air and Water Pollution of the Senate Comm. on Pub. Works*, 90th Cong., 1st Sess. (1967) [hereinafter cited as *J. Hearings—Electric*]. For suggestions regarding "major antitrust action" to restructure the industry, see testimony of Arkus-Duntov in 1969 *Hearings*, *supra* note 24, at 404-06. Regarding the alternative need for government subsidization of entry, see testimony of Ayres in *J. Hearings—Steam*, *supra* at 10-12.

123. Prospective automobile firms place the minimum optimal scale for integrated production at 500,000 instead of 300,000 units. Arkus-Duntov, 1969 *Hearings*, *supra* note 24, at 406. They also state that an annual sales volume of 500,000 or more vehicles is minimally required to maintain a national dealer system. Wyman, *Can the Steam Automobile Come Back*, 9 STEAM AUTOMOBILE #2 (1967). The initial capital investment required merely to build an integrated plant with this annual capacity has been estimated at \$1 to \$2 billion. Arkus-Duntov, 1969 *Hearings*, *supra* note 24, at 406.

Moreover, there are indications that the Big Three are pursuing programs which will raise entry barriers even further. While their trend toward more complete backward integration has continued unabated, see, e.g., STANDARD & POOR, *INDUSTRY SURVEYS: Auto Parts—Basic Analysis* A138 (October 8, 1970), these firms have begun to place major emphasis on greater forward integration into retail distribution and are buying up formerly franchised outlets. Until recently, the Big Three distributed their automobiles through a large number of franchised dealers who although pressured to accept a policy of exclusivity might have been at least theoretically accessible to new automobile producers. See Ralph Nader's testimony in 1968 *Hearings*, *supra* note 20, at 155. Now, however, they are rapidly eliminating dealerships and replacing franchised outlets with factory-controlled operators or "house dealers." See Note, *Antitrust Law and The New Industrial State: An Application to Automobile Distribution Practices*, 4 UNIV. OF SAN FRANCISCO L. REV. 78, 111 (1969). As a result, the number of active dealerships has declined from 49,173 in 1949 to 27,486 in 1969, or by more than 44 per cent. See testimony of Hammond in 1969 *Hearings*, *supra* note 24, at 19. In addition, franchised dealers who have not yet been replaced by factory operators, increasingly are being bypassed by direct "fleet sales" made by the manufacturers to retail customers at below dealer or even production cost. *Hearings Before the*

## Automobile Industry

General Motors, Ford and Chrysler reject any notion of "artificial" barriers to entry into the automobile industry. Instead, they contend that there are no obstacles which cannot be overcome.<sup>124</sup> In support of their position, they cite the possibility of conglomerate entry by General Electric and Westinghouse and the actual expansion of several foreign manufacturers into the market.<sup>125</sup> But conglomerate entry by either of these firms has failed to materialize despite the technological capability of both to produce reliable electric vehicles and the vast financial resources of the former.<sup>126</sup> The Big Three's second line of defense involves the successful expansion of standard styled foreign imports, particularly Volkswagen and Toyota, into the American market.<sup>127</sup> This comparison of foreign with domestic entry possibilities, however, is entirely inappropriate.<sup>128</sup> Moreover, it suggests that by

*Special Subcomm. on Automobile Marketing Practices of the Senate Comm. on Commerce*, 90th Cong., 2d Sess. 5-8 (1968). These developments, however, will not only absolutely foreclose retail outlets from new entrants, it will also deprive those few remaining independent parts manufacturers of the outlets they require for survival. Furthermore, the elimination of components producers will augment existing barriers to entry by new automobile manufacturers.

124. General Motors suggests, for example, that "entry into the business is open to all who are willing to assume the risks: there are no artificial barriers." *GENERAL MOTORS*, *supra* note 52, at 81. It concedes, however, that there are "certain critical requirements for entry" including large capital investment and substantial economies of scale. *Id.*, at 83. But it implies that these entry requirements are compelled in part by the "competitive necessity" of engaging in annual style change. *Id.*, at 83-84, 29. Thus, it argues that annual restyling is a form of efficiency mandated by consumer preference and that any barriers resulting therefrom are inherently "natural" rather than "artificial." *Id.*, at 29, 52-53, 71-75, 84-85. This argument assumes implicitly, however, that consumer acquiescence in the Big Three's policy of planned obsolescence is equivalent to consumer preference for that policy. Upon closer examination, such an assumption appears to be wholly unwarranted. See note 141 *infra*. Moreover, there is evidence that by substantially inflating production and distribution costs and by discouraging technological innovation, annual style change has actually led to a net reduction in efficiency. See note 136 *infra*.

125. General Motors, for example, relies on the rumored possibilities of electric car entry by General Electric or Westinghouse to support its argument that entry into the industry remains possible. *GENERAL MOTORS*, *supra* note 52, at 83-84. For a similar suggestion regarding the possibility of conglomerate entry into the industry, see Shubik, *A Game Theorist Looks at the Antitrust Laws and the Automobile Industry*, 8 *STAN. L. REV.* 594, 624-25 (1956).

126. See *J. Hearings—Steam*, *supra* note 138, at 205-06; *J. Hearings—Electric*, *supra* note 138, at 486-87. Moreover, as the nation's fourth largest industrial corporation, General Electric in particular should have no financial entry difficulties—if access is as open as General Motors suggests. For GE's sales rank, see *FORTUNE*, May 1970, at 184.

127. *GENERAL MOTORS*, *supra* note 52, at 81, 82 n.46.

128. Unlike a prospective domestic entrant, foreign producers such as Volkswagen and Toyota relied upon large plant scale economies in Germany and Japan, respectively, and enormous world-wide sales to support their expansion into the American market. These companies marketed vehicles in America for nearly a decade before their sales volumes here reached the 60,000 unit level considered minimally adequate for efficient production of standard-styled cars. See Schupack, *1968 Hearings*, *supra* note 20, at 920. Indeed, even GM admits this distinction. *GENERAL MOTORS*, *supra* note 52, at 23. Volkswagen began producing automobiles in 1915 but did not begin selling in the United States until 1949. In that year, it sold two vehicles. Not until 1958 did its sales volume in this country exceed 60,000 units. *FORTUNE*, August 1957, at 106; *FORTUNE*, March 1969, at 116. Similarly, Toyota first began selling vehicles in this country in 1958, but only in 1968 did its sales

simply not annually changing model styles a domestic firm could overcome all the structural obstacles occasioned by nearly five decades of annual restyling by the Big Three. This is demonstrably untrue.<sup>129</sup>

The foregoing analysis suggests that by pursuing annual style change the Big Three may have created an anticompetitive industry structure of three well-entrenched manufacturers. High market concentration may enable them to restrict output and raise prices above competitive levels. High barriers to entry may deter newcomers attracted by the tight oligopoly's greater-than-competitive profits. Again, pending a more exhaustive investigation by the FTC, annual style change appears to have been the underlying cause of these developments.

### C. Style Change and Performance

For most antitrust economists, noncompetitive performance (e.g., high prices, high costs, retarded innovation) is an inevitable result of anticompetitive structure.<sup>130</sup> It has been suggested, however, that due to their relative inexperience in the economics of industrial organization, the courts might be less willing to make this causal leap and might demand instead a showing of both anticompetitive structure and noncompetitive performance.<sup>131</sup> Some manifestations of unsatisfactory performance resulting from the automobile industry's anticompetitive structure have already been described.<sup>132</sup> To the extent, therefore, that annual style change was responsible for this structure, it indirectly impaired the industry's performance. This section briefly suggests, however, that annual style change itself may directly con-

here reach the 60,000 volume level. *FORTUNE*, December 1969, at 77. By the time that sales volume was achieved in America, Volkswagen was selling nearly half a million, and Toyota a million and a quarter, automobiles in more than 100 countries. *FORTUNE*, August 1957, at 106; *FORTUNE*, December 1969, at 78.

129. Entry as an assembler is no longer feasible. The independent parts manufacturers and independent retail distributors of earlier years have largely vanished as the Big Three have moved toward complete vertical integration. See note 113 *supra*. Consequently, an entrant bent on producing a standard-styled vehicle in 1970 would need nonetheless to integrate backward into components production and forward into a nationwide distribution system, at a capital investment cost estimated at more than half a billion dollars. Backward integration would require a minimum of \$250 million; forward integration could be achieved at a cost of no less than \$326 million. Note 115 *supra*. Even were it able to raise this amount of capital, a firm offering standard-styled cars to consumers accustomed to annually restyled products would probably be compelled to undertake lengthy and expensive countervailing promotional campaigns and to sell its vehicles at a substantial price disadvantage for a decade or more. See p. 589 *supra*. Indeed, it took Volkswagen and Toyota that long; and unlike a domestic entrant, these firms were able to rely on substantial worldwide sales to subsidize their prolonged break-in losses in this country. Schupack, 1968 *Hearings*, *supra* note 20, at 920 n.6.

130. See, e.g., Mueller, *supra* note 2, at 89-90; notes 2 & 3 *supra*.

131. Smith, *supra* note 2, at 57-58.

132. See note 24 and accompanying text *supra*.

## Automobile Industry

tribute to unsatisfactory market performance by reducing efficiency and retarding progressiveness.

Efficiency in terms of market performance is generally measured by comparing actual costs and prices with those that would obtain in a competitively structured market.<sup>133</sup> Annual style change has substantially inflated production and distribution costs, and hence prices, by vastly increasing selling and retooling costs. In 1969, as noted above, the Big Three spent \$1.56 billion, or \$195 per car, for restyling.<sup>134</sup> Advertising accounted for another \$75 in per unit expenditures.<sup>135</sup> These costs amounted to several billion dollars in consumer expenditures for 1969. Yet buyers were never given a choice between purchasing the same model as last year's at a lower price and a new model at a higher price.<sup>136</sup>

Moreover, there is some evidence that the Big Three may employ annual style change as a surrogate for cost-saving innovations. By introducing a "new" model each year, they provide consumers with the illusion of progress and yet avoid the necessity of adopting technological improvements which would lower maintenance or initial purchase costs.<sup>137</sup> It has been argued, for example, that application of known

133. See note 5 *supra*.

134. See p. 576 *supra*.

135. See note 115 *supra*.

136. Turner has framed the cost savings loss argument in the following manner:

The major producers evolved a policy of annual model changes that, by accelerating the scrapping of expensive machine tools and dies, substantially increased the cost of automobiles. Since all of the major producers pursued this policy, and since the products of small producers were for a variety of reasons unappealing to most consumers, buyers were never given a choice between purchasing the same model as last year's at a lower price and a new model at a higher price.

*Conglomerate Mergers and Section 7 of the Clayton Act*, 78 HARV. L. REV. 1313, 1335 (1965). See also WISS, *supra* note 20, at 364-65. The study by Fisher *et al.* estimated that the cost savings loss to consumers resulting from annual style and performance changes amounted to approximately \$5 billion annually, *supra* note 115, at 433-51. BLS data indicate that nearly all of the \$5 billion model change cost to the consumer is attributable to restyling rather than performance modification. See pp. 576-77 *supra*. To this figure must be added the cost savings loss due to the diversion of resources from technological improvements to style alterations. For example, had the Big Three spent \$36 of the estimated \$195 consumed in restyling (see p. 576 *supra*) for processing its sheet metal with a chrome over galvanized steel process, the resulting doubling in the automobiles longevity would have saved consumers \$2.1 billion a year. See p. 594 *infra*.

137. See testimony of Arkus-Duntov in 1969 Hearings, *supra* note 24, at 402-03.

For example, if the chrome over galvanized steel treatment discussed at p. 594 *infra*, were utilized, automobiles would physically deteriorate less than twice as rapidly. Presumably, industry sales would therefore fall as the demand for replacements declined. The failure of this industry to adopt measures such as these which would improve the durability of its products, coupled with its promotion of psychological deterioration through annual style changes, has led many economists to charge the Big Three with "planned obsolescence." See, e.g., Lanzillotti, *supra* note 24, at 341-45; Dowd in 1969 Hearings, *supra* note 24, at 524. Moreover, it has been suggested that the Big Three are reluctant to introduce steam or electric vehicles because the number of parts required for these propulsion systems is far less than those needed for conventional gasoline engines. Since these firms derive a substantial amount of profit from "aftermarket" (i.e., replacement parts) sales, they

metallurgical processes would permit doubling the life of an automobile for an additional cost of \$36 per year, resulting in an annual savings to consumers of more than \$2 billion.<sup>138</sup> Crash-absorption bumpers have been developed which could save the public an additional \$1 billion a year.<sup>139</sup> Pollution-free electric and steam vehicles can now be produced which would cost half as much to own and even less to operate than conventional gasoline automobiles.<sup>140</sup> These developments, however, would increase automobile durability and thereby reduce demand, price and profits on new car sales. It is suspected, therefore, that the Big Three have repressed these cost-savings advances while offering consumers instead an annual restyling policy designed to bolster replacement demand through planned obsolescence.<sup>141</sup>

Similarly, annual style change may have retarded this industry's

are unwilling to produce pollution-free vehicles which have a significantly smaller after-market. Esposito, *supra* note 24, at 35. There is perhaps another reason for this reluctance. It has been suggested that were the Big Three to produce electric vehicles, for example, industry barriers to entry would decline due to lower production costs and minimum scale economies. Ayres, *J. Hearings—Steam*, *supra* note 122, at 8.

138. Testimony of Lutz in 1969 *Hearings*, *supra* note 24, at 468-70.

139. N.Y. Times, October 2, 1970, at 19. Sen. Nelson also cites the automobile industry for its failure to use energy absorbing bumpers and crash bars in its products. 1969 *Hearings*, *supra* note 24, at 512. The U.S. Steel Corporation has developed an automobile body with complete perimeter crash protection including steel roll bars front and rear. N.Y. Times, October 12, 1970, at 37.

140. See, e.g., statement of Orr in *J. Hearings—Steam*, *supra* note 122, at 63; Federal Power Commission, *Development of Electrically Powered Vehicles* in *J. Hearings—Electric*, *supra* note 122, at 29.

141. See note 137 *supra*. It might be suggested, nevertheless, that unless consumers were completely content with annual restyling they would not continue to purchase vehicles from the Big Three. See note 121 *supra*. This argument, however, is specious. It is tantamount to suggesting that whenever consumers willingly buy products from a monopolist or tight oligopolist, they are content with the price and quality of the goods purchased. In fact, the public pays higher-than-competitive prices for less-than-optimum-quality goods when there is an absence of alternative suppliers, i.e., an absence of competition. Such is the condition of the automobile industry. Unless a consumer can utilize the less than standard-sized vehicles of the foreign automobile producers, he has little choice but to purchase an annually restyled car from the Big Three. Moreover, the substantial rate of depreciation engendered by annual restyling will encourage him to repurchase on an annual or semi-annual basis. The fact that consumers continue to purchase annually restyled vehicles, therefore, does not necessarily imply that they would not prefer a wider range of alternatives provided by a less concentrated automobile industry. See Dowd in 1969 *Hearings*, *supra* note 24, at 540; Schupack in 1969 *Hearings*, *supra* note 24, at 541.

Within the past few months, the Big Three have introduced "subcompact" vehicles to compete with the imported standard-styled automobiles of foreign manufacturers, particularly Volkswagen and Toyota. Whether these subcompacts will be annually restyled is still an open question. Ford has suggested that its subcompact entry, the *Pinto*, might remain as basically unchanged as its earlier *Model T*. New York Times, November 6, 1970, at 42. Nevertheless, the Big Three's earlier introductions of "compacts" in the early 1960's were accompanied by similar overtones of standard-styling. Yet, the compacts were in fact restyled annually. Moreover, even if the subcompacts do remain unchanged, they will not encourage *de novo* entry into the automobile field by other firms. To meet the short-term threat of attempted entry into the subcompact market, the Big Three could rely on profits from their sales of restyled, regular-sized vehicles to subsidize increased promotion and near-cost sales of their subcompacts. To survive, a new domestic entrant would require a share of the regular-sized car market, but that larger field is still very much influenced by the Big Three's annual restyling policies.

## Automobile Industry

progressiveness as measured by the number and importance of actual innovations that have been developed as compared with what could have been achieved absent style change. It has been noted, for example, that the innovative characteristics of the industry began to decline shortly after annual restyling was introduced in the 1920's.<sup>142</sup> Moreover, there is evidence that since then an increasing proportion of the Big Three's resources have been shifted from research and development to restyling and related promotional activities.<sup>143</sup> Perhaps as a result, most recent innovations have come from outside the leading firms. Improvements such as new suspension systems and disc brakes were first introduced by small European firms.<sup>144</sup> Other advances, notably automatic transmissions and power steering, originated in small domestic concerns.<sup>145</sup> In short, an emphasis on style change may have supplanted the drive for technological progress in this industry.

Furthermore, it has been suggested that, paradoxically, annual style change does not result in a wide variation in the appearance of different automobile makes.<sup>146</sup> Instead, given their high degree of interdependence, the Big Three protectively imitate each other's designs.<sup>147</sup> Thus, Professor Bain has found that in this industry "the highly imitative product policies of rival oligopolists seem to lead to substantial uniformity of available products and to a suppression of the potential variety in products."<sup>148</sup> Annual style change, then, may only have increased the rate rather than the degree of style innovation.<sup>149</sup>

As a fundamental determinant of this industry's highly anticompetitive structure, annual style change may have been the primary factor accounting for what could be termed noncompetitive performance in automobile manufacturing. In addition to increasing concentration and raising barriers to entry, it appears to have substantially impaired industry market performance by reducing efficiency and retarding technological growth.

142. See Lanzillotti, *supra* note 24, at 345.

143. Testimony of Arkus-Duntov, 1969 *Hearings*, *supra* note 24, at 402-03. GM, for example, reported that in 1967 it spent \$664 million for R&D, as compared with \$881 million for annual restyling. 1968 *Hearings*, *supra* note 20, at 736, 746.

144. Lanzillotti, *supra* note 24, at 344. Disc brakes were mass produced by smaller European automobile manufacturers for more than a decade before they appeared on American cars. Nader in 1968 *Hearings*, *supra* note 20, at 212.

145. Lanzillotti, *supra* note 24, at 344.

146. See, e.g., INDUSTRIAL ORGANIZATION, *supra* note 2, at 240-42, 423-25; Mueller, *supra* note 89, at 90-91. But see Jacoby's testimony in 1969 *Hearings*, *supra* note 24, at 541.

147. See note 24 *supra*.

148. INDUSTRIAL ORGANIZATION, *supra* note 2, at 425.

149. For example, the migration of the gear shift from floor to steering column and, recently, back to floor again affected the rate but not the net amount of change. Note 39 *supra*.

### III. Automobile Style Change as an "Unfair Method of Competition" Under Section 5 of the Federal Trade Commission Act

As previously noted, annual style change is a form of oligopoly conduct apparently invulnerable to prosecution under conventional Sherman and Clayton Act standards. This, however, was the type of problem Congress sought to solve by enactment of Section 5 of the Federal Trade Commission Act in 1914. More than two decades had passed since its passage of the Sherman Act in 1890; but Congress believed that its earlier legislation had been largely ineffective in halting a widespread and growing concentration in industry.<sup>150</sup> To avert further concentration, it created the Federal Trade Commission as an administrative tribunal capable of undertaking intensive economic investigations and empowered under Section 5 to strike down "unfair practices" which, although lawful in themselves, nevertheless tended toward a suppression of competition through the elimination of actual or potential rivals.<sup>151</sup> Congress deliberately left unspecified those practices which the FTC might proscribe as "unfair" in order to allow the Commission the widest latitude in dealing with novel methods by which concentration might be increased.<sup>152</sup>

In reviewing FTC findings of "unfair methods of competition" in cases brought under Section 5, the Supreme Court has complied with the intent of Congress by establishing flexible guidelines for illegality. It has deferred to the FTC's administrative expertise, holding that "[t]he precise impact of a particular practice on the trade is for the Commission, not the courts, to determine"<sup>153</sup> and limiting its function

150. See *Federal Trade Commission v. Gratz*, 253 U.S. 421, 432 (1920) (Brandeis, J., dissenting).

151. *Id.* at 442-43.

152. *Id.* at 423; S. REP. NO. 597, 63d Cong., 2d Sess. 13 (1914). The Conference Report stated: "It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field." *Id.* By enacting Section 5, Congress hoped to establish an expert body which by "careful study of the business and economic conditions of the industry affected" could detect and condemn concentration-increasing conduct which was impossible to reach under the Sherman Act or the recently enacted Clayton Act. *Federal Trade Commission v. Keppel & Bros.*, 291 U.S. 301, 314 (1934); S. REP. NO. 397, *supra*, at 9, 11.

The legislative history clearly evinces the intent of Congress to provide the FTC with a flexible weapon against novel forms of anticompetitive conduct. See H.R. REP. NO. 1142, 63d Cong., 2d Sess. (1914); REP. NO. 597, 63d Cong., 2d Sess. (1914). For commentaries on this history, see HENDERSON, *THE FEDERAL TRADE COMMISSION* (1927); Austern, *The Parentage and Administrative Ontogeny of the Federal Trade Commission*, 1955 N.Y.S.B.A. ANTITRUST LAW SYMPOSIUM 83; Baker & Baum, *Section 5 of the Federal Trade Commission Act: A Continuing Process of Redefinition*, 7 VILL. L. REV. 517 (1962); Votaw, *Antitrust in 1914: The Climate of Opinion*, 24 A.B.A. ANTITRUST SECTION 14 (1961). But see Posner, *The Federal Trade Commission*, 37 U. CHI. L. REV. 47 (1969).

153. *FTC v. Motion Picture Adv. Co.*, 344 U.S. 392, 396 (1953). See also *FTC v. Texaco*, 393 U.S. 222, 225 (1968).

## Automobile Industry

on review to "determining whether the Commission's decision has warrant in the record and a reasonable basis in law."<sup>154</sup> It has ruled that to be "unfair," conduct need not violate other antitrust laws, but must merely "conflict with the basic policies of the Sherman and Clayton Acts."<sup>155</sup> To give meaning to this general standard, the Court has upheld FTC findings of "unfair" practices when their anticompetitive impact as determined by the Commission was characteristic of conduct already proscribed under Sherman and Clayton Act standards.<sup>156</sup> Thus, the Court could be expected to uphold an FTC finding

154. *Atlantic Refg. Co. v. FTC*, 381 U.S. 357, 367-68 (1965).

155. *FTC v. Brown Shoe Co.*, 384 U.S. 316, 320-321 (1966). See also similar statements in *FTC v. Motion Picture Advertising Serv. Co.*, 341 U.S. 392, 394-95 (1953); *Atlantic Ref. Co. v. FTC*, 381 U.S. 357, 369 (1965). The judicial application of Section 5 falls into five separate categories. (1) Sherman Act violations: see, e.g., *FTC v. Beech-Nut Packing Co.*, 257 U.S. 441 (1922) (resale price-maintenance); *FTC v. Pacific States Paper Trade Ass'n*, 273 U.S. 52 (1927) (price fixing conspiracy); *Fashion Originators' Guild v. FTC*, 312 U.S. 457 (1940) (group boycott); *FTC v. Cement Institute*, 333 U.S. 683 (1948) (delivered pricing conspiracy). (2) Section 3 Clayton Act violations: see, e.g., *Fashion Originators' Guild v. FTC*, 312 U.S. 683 (1940); *Times-Picayune Publishing Co. v. United States*, 315 U.S. 594 (1953) (tie-in); *Oppenheim, Guides to Harmonizing Section 5 of the Federal Trade Commission Act with the Sherman and Clayton Acts*, 50 Mich. L. Rev. 821 (1961). (3) Practices characteristic of but falling short of Sherman Act violations and Section 3 Clayton Act violations: see, e.g., *FTC v. Motion Picture Advertising Service Co.*, 344 U.S. 392 (1953) (quasi-monopolistic exclusive contracts); *Atlantic Ref. Co. v. FTC*, 381 U.S. 357 (1965) (quasi-tying arrangements); *FTC v. Brown Shoe Co.*, 384 U.S. 316 (1966) (quasi-exclusive dealing franchise agreements); Comment, *Per Se Rules and Section 5 of the Federal Trade Commission Act*, 54 CALIF. L. REV. 2049 (1966). (4) Practices characteristic of but not explicitly prohibited by the Robinson-Patman Act: see, e.g., *Grand Union Co. v. FTC*, 300 F.2d 92 (2d Cir. 1962) (customer induced promotional allowances); *R.H. Macy & Co. v. FTC*, 326 F.2d 445 (2d Cir. 1964) (coerced contributions from vendors); *Rahl, Does Section 5 of the Federal Trade Commission Act Extend the Clayton Act?* 5 ANTITRUST BULL. 533 (1960). (5) Practices characteristic of but not explicitly proscribed by Section 7 of the Clayton Act: see, e.g., *Beatrice Foods Co. 1965-1967 Transfer Binder Trade Reg. Rep. ¶ 17,244* (FTC 1965) (noncorporate acquisition); *Dean Foods Co. 1965-1967 Transfer Binder Trade Reg. Rep. ¶ 17,763* (FTC 1966) (purchase agreement an unfair method of competition).

156. In *Brown Shoe* and *Atlantic Refining*, for example, it upheld the FTC's proscription of practices which accomplished the same anticompetitive end as exclusive dealing and tying arrangements, respectively (i.e., market foreclosure), but which violated neither the Sherman nor Clayton Act. In *Atlantic Ref. Co. v. FTC*, 381 U.S. 357 (1965), the Supreme Court held that the FTC was warranted in finding a sales-commission plan between a gasoline distributor and a major tire manufacturer an unfair trade practice because although not a tying agreement, "the effect of this plan is similar to a tie-in." 381 U.S. at 371. The arrangement condemned here involved Atlantic's sponsoring of Goodyear-supplied tires, batteries, and accessories to Atlantic's wholesalers and retail dealers. This arrangement has been termed a "quasi-tying agreement" because Atlantic did not manufacture the tied product, although it received a commission on dealers' purchases. See Comment, *Per Se Rules and Section 5 of the Federal Trade Commission Act*, 54 CALIF. L. REV. 2049, 2055-63 (1966). In *FTC v. Brown Shoe*, 381 U.S. 316 (1966), the Court found that respondent's franchise program, by effectively foreclosing competitors from selling to a substantial number of retail shoe dealers, "obviously conflicts with the central policy" of the Sherman and Clayton Acts, 384 U.S. at 321. Here a franchise agreement, whereby Brown agreed to give valuable services to independent retail stores in exchange for the latter's contractual promise to deal "primarily" in Brown shoes, was held an unfair method of competition. This agreement has been termed a "quasi-exclusive dealing" arrangement because of the absence of the usual promise from the dealer not to handle any goods which compete with those of the seller. See Comment, *supra*, at 2066-68. But see *FTC v. Sperry & Hutchinson Co.*, 432 F.2d 146 (5th Cir. 1970), cert. granted, 39 U.S.L.W. 3424 (U.S. Mar. 30, 1971) (No. 1278).

that annual style change as interdependently pursued by the Big Three violated Section 5 if the Commission demonstrated that in the automobile industry this practice had accomplished the same anticompetitive ends as had recognized antitrust violations.

Part I of this Note established that the premise of antitrust legislation was unequivocally competition and that persistently high structural concentration and accompanying high barriers to entry are inimical to that objective. It suggested that certain forms of conduct could produce these anticompetitive structural features. Part II demonstrated that as pursued interdependently by the Big Three annual style change seemed to be conduct of this kind. As suggested above, the broad legislative mandate underlying Section 5 of the Federal Trade Commission Act was that concentration-increasing practices be identified and proscribed as "unfair." The case law under Section 5, however, requires analogy to antitrust violations. It will now be argued that the impact of annual style change upon industry concentration and entry barriers is sufficiently analogous to the structural impact of excessive promotional expenditures, predatory pricing and spending activities, and monopolistic practices to warrant a finding of illegality under Section 5.

The impact of any particular practice upon industry concentration can be factually demonstrated to a reviewing court by proving the extent to which it increases the market shares of the leading firms and increases the height of barriers to entry.<sup>157</sup> The issue of illegality, however, may pose a more difficult problem because it necessitates a determination of the threshold beyond which concentration and barriers to entry become clearly anticompetitive and the practices producing them may be termed "unfair." An abundance of economic evidence suggests that when 50 per cent or more of an industry's total sales is concentrated in four firms, and substantial barriers to entry are raised against newcomers, the survival of effectively competitive conduct and performance in that industry is highly improbable.<sup>158</sup> Consequently, while the question of threshold illegality might arise in other industrial contexts, it need not unduly concern a court reviewing competition in the automobile industry. As noted earlier, with three firms sharing 97 per cent of total domestic sales and without a successful newcomer in nearly fifty years, this industry is one of the most highly concentrated and entry-resistant enterprises in American manufac-

157. See note 3 *supra*.

158. See p. 569 *supra*.

## Automobile Industry

turing. In short, if it could be shown that annual style change produced a high level of concentration and engendered substantial entry barriers and that these two structural effects could be analogized to results arising from other practices proscribed under the antitrust laws, there would be no problem in deciding that the degree of concentration and the height of entry barriers in the automobile industry were sufficient to warrant a finding of a Section 5 violation.

### A. *The Analogy of Style Change to Excessive Promotional Expenditures: The American Tobacco and Clorox Cases*

Excessive promotional expenditures, those which might increase concentration beyond the tight oligopoly threshold (*i.e.*, four firms with persistently 50 per cent or more of industry sales), have been banned under the antitrust laws when they occurred in the context of collusion or merger. By vastly increasing the countervailing selling costs required for entry or survival in the market in which they are employed, promotional expenditures of large magnitude may threaten the existence of actual competitors and deter potential entrants.<sup>159</sup> Arguably, annual style change has an analogous impact upon actual and potential competitors in the automobile industry. Indeed, it has been suggested above that annual restyling may not only raise selling costs by requiring massive readvertising and retooling each year, but it also may increase distribution costs by requiring the establishment of a nationwide retail network and may increase production costs by requiring higher volumes of output.

Although the Supreme Court has never explicitly held that heavy promotional expenditures *per se* constitute an antitrust violation, it has recognized their anticompetitive implications when undertaken as a result of collusion or merger in Sherman and Clayton Act cases, respectively. As early as 1946, the Court noted that "tremendous advertising" outlays had been used by the Big Three cigarette manufacturers to foreclose new entry.<sup>160</sup> In *American Tobacco*, it affirmed the convictions of American, Liggett and Reynolds for conspiracy to monopolize in violation of Sections 1 and 2 of the Sherman Act.<sup>161</sup> Although these defendants had engaged in several exclusionary activities, including predatory price cutting and coercive purchasing programs, the Court placed substantial emphasis upon their \$40 million annual advertising

159. See Smith, *supra* note 2, at 51-52; Turner, *Advertising and Competition*, 26 FED. BAR J. 93 (1966); Mueller, *supra* note 89.

160. *American Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946).

161. *Id.*

campaigns, finding that this activity required entrants to engage in equally massive and costly countervailing advertising. It concluded that to a considerable extent, the Big Three had preserved their two-thirds share of the tobacco industry by wielding a "powerful offensive and defensive weapon against new competition" which had served to warn any prospective competitor that it "dare not enter such a field, unless it be well supported by comparable national advertising."<sup>162</sup>

Of course, the practices condemned in *American Tobacco* are not precisely similar to the phenomenon of style change in the automobile industry. The former involved only advertising, whereas, the latter includes several additional activities which inflate entry costs. Moreover, conduct was pursued differently in these two cases. Unlike the leading automobile producers, the three largest cigarette manufacturers had acted in concert. Furthermore, the Court's statements concerning their promotional expenditures were dicta given the evidence of overtly predatory pricing practices.

Nonetheless, the concentration-increasing impacts of the cigarette and automobile firms' conduct are analogous. Although annual style change was pursued interdependently by the Big Three automobile companies, it could scarcely have served as a more effective deterrent to new entry had it been pursued in concert. In fact, annual restyling by the leading automobile producers very likely exceeded the deterrent capacity of the tobacco firms' advertising expenditures.<sup>163</sup> Thus, by analogy to the anticompetitive structural impact of advertising in *American Tobacco*, annual style change in the automobile industry would seem to constitute an "unfair method of competition" under Section 5.

In 1967, this time in the context of a Clayton Act Section 7 merger

162. *Id.*

163. Assuming, for example, that the costs of countervailing promotion might equal the established firms' collective promotional efforts, a newcomer would be at least ten times more able to meet the entry costs generated by the three tobacco firms' \$40 million expenditures than those resulting from the Big Three's \$400-\$600 million advertising campaigns. The upper range of advertising expenditures was obtained by multiplying Lantini's \$75 per car figure (see note 115 *supra*) by the Big Three's current collective output of 7.98 million vehicles. STANDARD & POOR, *supra* note 18, at A161. The lower advertising estimate was based on advertising expenditures in selecting media for 1968 reported by STANDARD & POOR, *id.* at A170. Moreover, a firm contemplating entry into the automobile industry would encounter the additional costs and risks associated with requisite backward and forward integration as well as annual retooling expenditures.

That annual style change may have actually exerted a greater anticompetitive impact on the structure of the automobile industry than that of heavy advertising on the structure of the cigarette industry may be seen in the concentration trends of the two markets. From 1931 until the time of suit in 1939, the three cigarette firms' collective market share dropped from 91 to 68 percent. 328 U.S. 781 at 795. During that same period, the leading three automobile companies' share rose from 81 to 90 percent. FTC REPORT, *supra* note 21, at 29, 1058.

## Automobile Industry

case, the Court reiterated its concern that advertising resources might be used by dominant firms in a tight oligopoly to increase and/or preserve high concentration. In *FTC v. Procter & Gamble Co.*, it upheld a Commission finding that Procter & Gamble's conglomerate acquisition of Clorox Chemical Co., the leading manufacturer of household liquid bleach, might substantially lessen competition or tend to create a monopoly in the production and sale of liquid bleach.<sup>164</sup> At the time of the acquisition, Clorox and one other firm accounted for 65 per cent of industry sales, and with four other firms, for almost 80 per cent.<sup>165</sup> In this already tightly concentrated industry, the Court held that Procter's acquisition of Clorox might increase concentration further or at least prevent possible deconcentration by raising barriers to entry. It specifically held that Procter's postmerger ability to divert a large portion of a promotional budget exceeding \$120 million to meet the short term threat of attempted entry created a formidable obstacle to newcomers.<sup>166</sup> Moreover, it intimated that the substitution of the powerful Procter for the smaller but dominant Clorox might lead to promotional competition which would eliminate the remaining smaller firms in this industry.<sup>167</sup>

Although the Court's acknowledgement in *Clorox* of the anticompetitive implications of excessive promotional expenditures arose in the context of a merger, the holding might best be explained in terms of tight oligopoly structure. The Clorox-Procter merger had not been a horizontal merger of competitors but instead a conglomerate product extension. The Court was primarily concerned not with the elimination of competition by merger but with the postmerger impact that Procter's advertising resources might have upon concentration in the tightly oligopolistic bleach industry. Regardless of how the giant Procter had entered this industry, *i.e.*, whether *de novo* or via merger, its enormous promotional resources threatened to increase concentration by eliminating smaller firms and raising barriers to entry.

Viewed from this perspective, the situation the Court feared in *Clorox* begins to approach the factual setting of annual style change in the automobile industry. In both situations, competitive industry structure is threatened by the concentration-increasing conduct of dominant firms. Annual style change by the Big Three, no less than Procter's advertising advantages, might have raised selling costs above the level

164. *FTC v. Procter & Gamble Co.*, 386 U.S. 563 (1967).

165. *Id.* at 571.

166. *Id.* at 573, 579.

167. *Id.* at 578.

tolerable for smaller actual and potential competitors. In fact, the former conduct seemed to produce the greater anticompetitive impact. For example, were Procter to have devoted its entire \$120 million promotional budget to thwarting attempted entry, a newcomer to the liquid bleach industry would have confronted a barrier one-third as costly to surmount as that erected by the Big Three's collective advertising efforts.<sup>168</sup> Moreover, annual style change arguably occasioned more than massive advertising in the automobile industry; it might very well have led to the several other entry-detering developments described earlier. Finally, in the automobile industry, unlike in *Clorox*, the anticompetitive impact quite possibly was real rather than merely potential. Annual style change may have actually eliminated nearly one hundred smaller producers. By contrast, the Court ordered Procter's divestiture of *Clorox* on the basis of a concentration-increasing impact that could *potentially* result were Procter to employ its promotional resources as a weapon against actual and prospective competitors. By reason of its arguably real and more formidable impact upon the competitive structure of the automobile industry, annual style change would seem to warrant condemnation as "unfair" under Section 5.

In *American Tobacco* and *Clorox*, the Court acknowledged that in highly concentrated industries excessive promotional expenditures whether actually undertaken by collusive oligopolists or merely threatened by a merger partner could seriously impair competitive structure. More recently, antitrust commentators have argued that excessive advertising *per se* by leading firms in a tight oligopoly should be proscribed under Section 5 because it can vitiate competitive structure and performance to the same extent as more common forms of concentration-increasing activities such as mergers.<sup>169</sup> One study has concluded:

To be sure, there can no longer be any serious doubt about the capacity of certain kinds of advertising, pursued with sufficient intensity, to bring about a massive restructuring of an industry, to "concentrate" its sales volume in the hands of two or three firms and thus to impose on the consuming public all the ills the law has long recognized as being associated with inordinately high concentration ratios. In a situation where advertising has *in fact* been used to achieve this kind of result, it should enjoy no more immunity from the antitrust laws than any other kind of concentration-increasing behavior.<sup>170</sup>

168. See note 163 *supra*.

169. S. Smith, *supra* note 2, at 51.

170. *Id.*

## Automobile Industry

This argument would seem to apply with even greater force to the concentration-increasing activities engendered by the Big Three's annual automobile restyling policy.

**B. *The Analogy of Style Change to Predatory Price Cutting: Standard Oil and "Predatory Spending"***

The anticompetitive impact of annual restyling on industry structure is also similar to that produced by the recognized antitrust violations of predatory pricing and spending. Of course, these latter violations differ by nature from style change in that they involve some form of "predatory intent," whereas no such element has been discovered in various studies of the automobile industry.<sup>171</sup> Nevertheless, the effects of all three practices on competitive structure are fundamentally analogous.

Prolonged sales by powerful firms at prices below out-of-pocket costs are banned as predatory when they drive out competitors or bar new entry. This practice is illegal because it enables firms with vast financial resources to outlast smaller competitors and ultimately to reap the abnormally high profits associated with high industry concentration. Such "predatory price cutting" has been proscribed as an attempt to monopolize by the Sherman Act since the landmark *Standard Oil of New Jersey v. United States* decision of 1911<sup>172</sup> and has been recently condemned as a Robinson-Patman Act violation in *United States v. National Dairy Products Corp.*<sup>173</sup>

Similarly, excessive spending by huge manufacturers which requires countervailing expenditures that are unprofitable for smaller competitors has been regarded as predatory when it results in heightened concentration by excluding actual or potential competitors.<sup>174</sup>

171. See note 27 *supra*.

172. *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911).

173. *United States v. National Dairy Products Corp.*, 372 U.S. 29 (1963). For recent manifestations of concern regarding predatory pricing, see *Reynolds Metals Co. v. FTC*, 309 F.2d 223 (D.C. Cir. 1962); *Foremost Dairies, Inc. v. FTC*, 348 F.2d 674 (5th Cir. 1965), *cert. denied* 382 U.S. 959 (1965); *Forster Mfg. Co. v. FTC*, 335 F.2d 47 (1st Cir. 1964), *cert. denied* 380 U.S. 906 (1965).

174. See Turner, *Conglomerate Mergers and Section 7 of the Clayton Act*, 78 HARV. L. REV. 1313, 1345-46 (1965); P. AREEDA, *ANTITRUST ANALYSIS* 519-20 (1967). Indeed, careful study of the *Standard Oil* case revealed no evidence of that predatory tactic. See McGee, *Predatory Price Cutting: The Standard Oil (N.J.) Case*, 1 J. LAW & ECON. 137 (1958). Predatory promotional spending, however, is beginning to be recognized by the courts. An allegation that "excessive advertising expenses" and rapid product modification has been employed to drive out competition survived a motion to dismiss in *Bailey's Bakery, Ltd. v. Continental Baking Co.*, 235 F. Supp. 705 (D. Hawaii 1964), *aff'd per curiam*, 401 F.2d 182 (9th Cir. 1968), *cert. denied* 393 U.S. 1086 (1969). By "predatory" nothing more is meant than the effect of unnecessarily impairing competition by raising barriers to new entry. No specific intent to exclude is implied, although it may very well exist. *E.g.*, refer to the

Predatory spending is an even more effective exclusionary weapon than predatory price cutting. Market strategies predicated upon price cutting are economically viable only if the surviving firm can recoup its losses through excessive profits obtained by pricing well above the competitive level. But these abnormally high profits will very likely bring new competition back into the field. A predatory price-cutter, therefore, might not be free from new entry for the length of time necessary to permit recovery of its original losses.<sup>175</sup> By contrast, a predatory spender not only drives out competitors unable to keep up, it also deters new competition by raising barriers to entry.<sup>176</sup>

Significantly, annual style change appears to be more closely analogous in anticompetitive impact to predatory spending than price cutting. As indicated earlier by the preliminary analysis of the automobile industry, this practice seemed responsible both for the elimination of smaller producers and the deterrence of firms attracted to the industry's extraordinarily high rates of return. In short, annual restyling is similar to predatory spending in that both practices increase concentration by setting expenditure rates at levels in excess of what either smaller producers or newcomers could afford.

Although the Supreme Court has never explicitly dealt with a case involving only allegations of predatory spending,<sup>177</sup> it has implied that this practice might violate the Sherman Act since its decision in the early *United States v. American Tobacco Co.* case of 1911.<sup>178</sup> In that case, it found as evidence of predatory intent American Tobacco's "persistent expenditure of millions upon millions of dollars in buying out plants, not for the purpose of utilizing them, but in order to close them up and render them useless for the purposes of trade"; the Court held that this firm had attempted to monopolize and had in fact monopolized the tobacco industry in violation of the Sherman Act.<sup>179</sup>

In *Tobacco*, the Court found that expenditures for the purchase and scrapping of plants helped achieve and preserve an extreme degree of concentration by eliminating potential as well as actual competition.

monopolization cases of *United Shoe* and *Alcoa* where practices "natural and normal" and "honestly industrial" were found nevertheless to discourage new entry unlawfully, *United States v. United Shoe Machinery Corp.*, 110 F. Supp. 295, 344-45 (D. Mass. 1953), *aff'd per curiam*, 347 U.S. 521 (1954); *United States v. Aluminum Co. of America*, 148 F.2d 416, 431 (2d Cir. 1945).

175. See note 174 *supra*.

176. *Id.*

177. But see *Bailey's Bakery, Ltd. v. Continental Baking Company*, 235 F. Supp. 705 (D. Hawaii 1964), *aff'd per curiam*, 401 F.2d 182 (9th Cir. 1968), *cert. denied*, 395 U.S. 1086 (1969).

178. 221 U.S. 106 (1911).

179. *Id.* at 183.

## Automobile Industry

Unable to acquire existing tobacco facilities, prospective entrants were compelled to invest in the construction of new plants. Indeed, a similar form of predatory spending characterized the *United States v. Aluminum Co. of America* case.<sup>180</sup> There, Judge Learned Hand ruled that Alcoa's anticipation of increases in demand for aluminum by doubling and redoubling its capacity excluded new competition in violation of the Sherman Act.<sup>181</sup> In both *Tobacco* and *Alcoa*, the costs of survival and entrance were heightened by the established firms predatory spending programs.

Of course, *Standard Oil*, *Tobacco* and *Alcoa* all involved monopolists; automobile manufacturing is dominated by oligopolists. But this difference in the degree of structural concentration achieved does not negate a basic similarity in the anticompetitive impact of the conduct involved. By excluding competitors and raising barriers to entry, annual style change by the Big Three may have been as effective in creating a tight oligopoly in the automobile industry as price cutting by Standard or predatory spending by American and Alcoa were in establishing monopolies in the oil, tobacco and aluminum industries, respectively. Indeed, the Big Three's annual \$400-\$600 million advertising campaigns, their \$1.5 billion annual restyling expenditures, and their past investment of billions of dollars in backward and forward integration might approach if not equal the anticompetitive structural consequences of the spending programs proscribed in *Tobacco* and *Alcoa*.<sup>182</sup> The predatory pricing and spending programs of the monopolists in these three cases resulted in Sherman Act violations. Accordingly, the similarity in anticompetitive impact of annual automobile style change with that of predatory pricing and spending provides another justification for the FTC declaring this practice "unfair" under Section 5.

### C. *The Analogy of Style Change to Monopolistic Practices: The Motion Picture Advertising Decision*

The implication of annual restyling by the Big Three for competitive industry structure is also analogous to that of monopolistic practices which have been declared "unfair methods of competition"

180. 148 F.2d 416 (2d Cir. 1945).

181. *Id.* at 431.

182. See note 163 *supra* for advertising computation. Regarding the Big Three's annual restyling expenditures, see note 45 *supra*. Their combined investment in integrated production and distribution facilities as of 1970 has been reported as amounting to nearly \$30 billion. STANDARD & POOR, CORPORATION RECORDS 1434, 1468, 2471 (June 1970).

under Section 5. When pursued interdependently by firms effectively sharing monopoly power, both forms of conduct tend to preserve if not increase high concentration by eliminating competitors with smaller market shares.

In *FTC v. Motion Picture Advertising*, for example, the Supreme Court held that an advertising film company, with 40 per cent of the relevant market, together with its three major nondefendant competitors, had collectively monopolized 75 per cent of the advertising film industry by jointly, although noncollusively, negotiating similarly exclusive contracts with theater owners.<sup>183</sup> Since the theater owner was paid to display these films, the exclusive dealing prohibition of Section 3 of the Clayton Act was inapplicable.<sup>184</sup> Moreover, respondent's less-than-dominant market position precluded a charge of monopolization under the Sherman Act. Instead, the Court treated the four jointly-acting firms as one and weighed the collective impact of their conduct on the advertising film industry's structure. It accepted the FTC's finding that this shared conduct had foreclosed to competitors all but 25 per cent of the available outlets for this business in the country and had resulted in the exit of several smaller film distributors.<sup>185</sup> Consequently, it held that "a device which has sewed up a market so tightly for the benefit of a few" constituted an "unfair method of competition" within the meaning of Section 5.<sup>186</sup>

In effect, the Court in *Motion Picture Advertising* analogized the anticompetitive impact of the four oligopolists' exclusive contracts to that which would have resulted had the contracts been unilaterally undertaken by a single monopolist. The latter situation, of course, would have provided the basis for a Sherman Act monopolization charge. Given this similarity in the collective concentration-increasing effects of the advertising firms' conduct, therefore, with that of a recognized antitrust violation, *Motion Picture Advertising's* contracts were held "unfair" under Section 5.

Annual style change by the three leading automobile companies, like the exclusive contracts of these four advertising film firms, arguably excludes competitors and increases concentration. It would thus seem to fall well within the analysis employed in *Motion Picture Advertising*. If General Motors, for example, managed to increase its

183. 341 U.S. 392 (1953).

184. This section makes unlawful a lease, sale, or contract for sale which substantially lessens competition or tends to create a monopoly. 15 U.S.C. § 14 (1964).

185. 344 U.S. at 399, 396.

186. *Id.* at 399.

## Automobile Industry

current market share to monopoly proportions and to preserve this position by accelerating the rate and extent of its style variations, a charge of monopolization under the Sherman Act would lie. Yet, if GM, Ford and Chrysler effectively share monopoly power and jointly deter new competition through annual variations in automobile styles, the consequences are as anticompetitive as if any one of these firms alone possessed monopoly power. Here, as in *Motion Picture Advertising*, the similarity in impact with that of a Sherman Act monopolization can be demonstrated. The results, therefore, should be the same: annual style change should be declared an "unfair method of competition" in the automobile industry.

The anticompetitive, concentration-increasing impact of annual style change by the Big Three in the automobile industry matches and surpasses that of several practices proscribed under the Sherman and Clayton Acts when undertaken by dominant firms: excessive promotional expenditures, predatory pricing and spending, monopolistic conduct. This analogy in terms of the comparable structural consequences of style change to recognized antitrust violations is all that is required for a Section 5 violation.

For over thirty years, the FTC has been aware that annual automobile restyling was impairing the competitive structure of this industry. In 1939, an FTC report recounted the marked decrease in the number of passenger car manufacturers and noted that the "introduction of yearly models, and the increasing importance of the style factor, the large amount of capital required to finance new models in good and bad years, all favored the large manufacturing company with huge capital and equipment resources."<sup>187</sup> Detailed examination of annual restyling practices undertaken by GM, Ford and Chrysler as an unfair method of competition under Section 5 would appear long overdue. Only the FTC's political or administrative paralysis would seem to stand in the way of bringing a well-founded antitrust suit against the automobile manufacturers.<sup>188</sup>

187. FTC REPORT, *supra* note 21, at 26.

188. For a recent attack upon the FTC's failure to divest GM, with the consequent loss in consumer savings of several billion dollars a year in lower automobile prices, see *Foreword* to 2 ANTIT. LAW & ECON. REV. 13-15 (Summer 1969). The Justice Department has also been severely criticized for its unwillingness to prosecute the passenger car industry. Indeed, it has failed to take any action despite its preparation of a 104 page complaint in 1966 charging GM with having violated sections 1 and 2 of the Sherman Act and section 7 of the Clayton Act. Significantly, the proposed suit alleged among other items that the effect of GM's annual restyling since the 1920's upon competitors was "obvious and dramatic." It declared further that "[t]ools and dies for new models are high-cost items that GM's smaller competitors can less easily afford." *Wall Street Journal*, October 31, 1967, at 24, col. 3. But see the FTC's recent complaint against the nation's five leading tire manufac-

#### IV. Some Considerations Regarding Relief

In antitrust, providing an adequate remedy is as important as proving the antitrust violation. Were style changing by automobile manufacturers found to violate Section 5, the formidable task of devising appropriate relief would still remain. Two different approaches suggest themselves which will be only briefly outlined here: structural dissolution of the Big Three or a moratorium on their annual style changes.

##### A. *The Appropriateness of Structural Dissolution*

If the preliminary economic analysis proves to be correct, restoration of competition to the automobile industry would require structural dissolution of the Big Three into independent assembly, manufacturing and distribution facilities. As discussed in Part II, GM's 1923 introduction of annual style change revolutionized this industry's structure. By giving rise to components integration, heavy advertising, franchised distribution and enormous capital requirements, it transformed an industry of numerous assemblers to one dominated by three completely integrated firms. In their drive to achieve full integration backward into manufacturing and forward into distribution, the Big Three have either acquired or eliminated the vast majority of companies which assembled cars, the manufacturers of automotive parts, and the independent wholesale/retail distributors. Dissolution would reverse this process. It might undo what more than four decades of annual style change have accomplished: a fully integrated, highly concentrated, anticompetitive industry structure.

The remedy of divestiture as applied to the automobile industry raises two important issues: is it economically feasible in an oligopoly setting and is it legally justifiable under Section 5?

Divestiture in oligopoly is no less feasible than in monopoly.<sup>189</sup> In both cases, feasibility depends upon the absolute size of the firm relative to economies of scale. Absent annual restyling requirements of integrated components production, technical efficiencies in the assembly

turers charging that their similar leasing agreements with bus companies enabled respondents to dominate the bus-tire market. In a significant break with precedent, however, the tire manufacturers were accused not of collusion, but of interdependently pursuing "parallel courses of business conduct constituting unfair methods of competition" under Section 5. 3 Trade Reg. Rep. ¶ 19,381 at 21,511. Moreover, the FTC is currently engaged in an investigation of the structure, conduct and performance of the automobile industry. 3 ANTITRUST L. & ECON. REV. 14-15 (Winter 1969-70).

189. Turner, *supra* note 33, at 1231 n.45.

## Automobile Industry

of automobiles could be achieved at any level of output greater than 60,000 units per year. At this volume, performance capabilities could still be efficiently improved through the purchase and assembly of specially tooled parts from external suppliers. Significantly, the average annual output of the Big Three's 45 assembly plants is approximately 177,000 cars per plant.<sup>190</sup> Divesting GM, Ford and Chrysler of all but one of their respective assembly facilities, therefore, would provide plants with capacities well in excess of the efficiency threshold for 42 new producers.<sup>191</sup> Spin-off of the Big Three's parts and distribution facilities, moreover, would enable these competitors to assemble automobiles with improved performance capabilities from components supplied by a variety of independent parts manufacturers and sold through independent distributors. Consequently, economists have generally concluded that dissolution would not lessen the efficiency with which automobiles are produced.<sup>192</sup> On the contrary, they argue that it would lead to increased efficiency.<sup>193</sup>

Divestiture would also appear to be legally justifiable under Section 5. The Supreme Court has apparently sanctioned the FTC's use in Section 5 proceedings of this and other remedies designed to effect structural reorganization.<sup>194</sup> Although in the past, courts rarely imposed this drastic sanction, more recently the Supreme Court has indicated that such reluctance is unwarranted when other remedies alone could not adequately dissipate undue market concentration resulting from a proscribed activity.<sup>195</sup> Accordingly, if the impact of annual style change on the structure of the automobile industry has been as profound as suggested above, structural reorganization through divestiture might be warranted.

190. General Motors operates 23 assembly plants; Ford operates 15 and Chrysler 7 such facilities. AUTOMOTIVE NEWS, ALMANAC ISSUE 68 (1979). Given the Big Three's current (1969) production at 7.98 million (note 45 *supra*), each assembly plant produces an average of 177,000 units per year.

191. The Big Three would each operate a single assembly facility thereby freeing their other 42 plants for operation by new competitors.

192. Schupack, 1968 Hearings, *supra* note 20, at 921. See also, ADMINISTERED PRICES, *supra* note 43, at 15.

193. See, e.g., Loescher, 1968 Hearings, *supra* note 20, at 915.

194. Whatever doubts may have existed concerning the extent of the Commission's remedial authority under section 5, they seem to have been firmly resolved in favor of according this agency the complete array of powers of a court of equity "including divestiture and other remedies designed to effect structural reorganization." *Ekon Prods. Co.* [1963-65 Transfer Binder] TAXID. REP. ¶ 16,879, at 21,901 (F.T.C. 1964), *aff'd* 347 F.2d 745 (7th Cir. 1965). See the Supreme Court's apparent recognition and sanction of this position in *Pan American World Airways v. United States*, 371 U.S. 296, 312 n.17 (1963) and *United States v. Philadelphia National Bank*, 374 U.S. 321, 339-40 n.17 (1963).

195. E.g., *United States v. du Pont & Co.*, 366 U.S. 316 (1961); *United States v. Aluminum Co. of America*, 377 U.S. 271 (1964); *Maryland & Virginia Milk Producers Ass'n v. United States*, 362 U.S. 458 (1960).

Dissolution of the Big Three along the lines suggested would not only be economically feasible and legally justifiable, it would also be competitively beneficial. It would substantially reduce entry barriers by weakening the market power of the leading producers. Under these eased entry conditions, economists have estimated that more than 100 additional firms could enter and compete effectively in the automobile industry.<sup>196</sup>

#### B. *A Moratorium on Annual Style Change*

Although economically feasible and legally justifiable, dissolution of the Big Three might nevertheless be precluded by political considerations. In that case, the FTC might wish to devise less drastic remedies specifically directed at the "unfair" practice. It might, for example, order a fixed term moratorium on all automobile style changes by the Big Three. Presumably, it would except performance modifications from its decree. As noted in Part I, the Bureau of Labor Statistics currently distinguishes between style changes (such as varying amounts of chromium and contour trim, changing body shell patterns and radiator grill designs) and performance changes (modifications of safety, efficiency, comfort or durability).<sup>197</sup> By framing its injunctive relief in terms of BLS criteria, the FTC could interdict anticompetitive annual style changes without affecting safety modifications or technological innovations.

A moratorium on style changes, however, might not be sufficient. Absent dissolution, new competition will emerge in the automobile industry only as a result of new entry. But proscribing annual restyling by the Big Three would not eliminate all the obstacles to entry which

196. Loescher in *1968 Hearings*, *supra* note 27, at 915. New companies could enter more easily and compete with those formed through dissolution of the Big Three's assembly facilities. See note 191 *supra*. These new producers, like those created by divestiture, would be able to obtain components and accessories from the independent suppliers created through spin-off. See p. 609 *supra*. They would be able to dispose of their products through dealers who were no longer pressured to deal exclusively with a single dominant firm. Finally, they would not need to undertake massive retooling and re-advertising expenditures annually. *Id.*

By breaking up existing firms and encouraging new ones to enter, divestiture would improve competitive market performance. If a dozen firms of similar size replaced the current industry structure, there is evidence that the average ratio of price to cost would be substantially reduced, thereby enhancing efficiency. Loescher in *1968 Hearings*, *supra* note 20, at 915. Likewise, it has been suggested that an industry of from 15 to 30 firms would greatly advance the rate of technological innovation and result in a wider variety of automobiles. Schupack, in *1969 Hearings*, *supra* note 24, at 541. On the basis of these expectations, an automobile industry of perhaps 100 or more producers would contribute immeasurably to this industry's performance. This is the industry which dissolution would engender.

197. See pp. 575-76 *supra*.

## Automobile Industry

have resulted from more than four decades of this practice. It would not, for example, recreate the independent distributors and parts manufacturers which no longer exist but which are indispensable to entry by nonintegrated firms. Consequently, additional relief would be necessary to provide prospective entrants with access to these facilities.

In fashioning supplemental relief to encourage the re-emergence of parts manufacturers and nonfranchised or factory owned distributors, the FTC could rely on ample precedents. It is well settled that in order to restore competitive conditions, the Commission may under Section 5 forbid acts lawful in themselves or compel affirmative acts of compliance.<sup>198</sup> To facilitate the growth of parts suppliers, for example, it could impose purchasing requirements upon the Big Three similar to those commonly contained in antitrust consent decrees. Such a requirement was included in a consent judgment entered in 1964 against American Cyanamid, a manufacturer of laminated melamine products which had integrated back into melamine production and with several co-conspirators had restrained competition in violation of Sherman and Clayton Act provisions.<sup>199</sup> To enhance entry opportunities for prospective non-integrated laminators, the decree encouraged the development of new sources of melamine supply. It did this by ordering American Cyanamid to purchase a specified amount of melamine from external suppliers.<sup>200</sup> Moreover, it imposed limitations upon the defendant's own production of this material.<sup>201</sup>

Similarly, the FTC could order the Big Three to freeze components production at current levels and purchase additional parts necessary for anticipated increases in automobile demand from external suppliers. Since industry sales forecasts indicate that demand should rise by more than 40 percent by 1975, future orders from the Big Three would constitute a certain and sizeable market for new parts manufacturers.<sup>202</sup> A reappearance of independent components firms would reduce, in turn, the backward integration requirements that bar entry by new automobile producers.

Alternatively, the FTC might simply order the Big Three to sell

198. See, e.g., Ekco Prods. Co., [1963-65 Transfer Binder] TRADE REG. REP. ¶ 16,879, at 21,905 (F.T.C. 1961).

199. United States v. American Cyanamid Co., 1964 Trade Cas. 79,628 (S.D.N.Y.). See also marketing orders used in lieu of divestiture in Simpson Timber Co., 60 F.T.C. 43 (1962) and Gulf Oil Corp., 56 F.T.C. 688 (1960). But see a criticism of such orders when used as a substitute for structural relief, Elzinga, *The Antimerger Law: Pyrric Victories*, 12 J. Law & Econ. 43, 66-71 (April 1969).

200. 1964 Trade Cas. 79,628, 79,635.

201. *Id.* at 79,631.

202. STANDARD & POOR, *supra* note 18, at A159.

parts to entering firms on a nondiscriminatory basis. Presumably, this entry of new automobile producers would be soon accompanied by the emergence of independent parts manufacturers seeking to supply the entering assemblers. When this occurred, the order could be rescinded.

With respect to other obstacles arguably occasioned by style change, the Commission could devise similarly specific relief. It could greatly alleviate the problem of achieving nationwide distribution, for instance, by requiring that the Big Three's franchised dealers carry the products of entering firms.<sup>203</sup> Moreover, it could reduce countervailing advertising requirements by setting limitations on the amount of annual advertising expenditures that the Big Three may undertake.<sup>204</sup>

Ideally, a style change moratorium accompanied by supplemental equitable relief would attract new firms formerly incapable of overcoming the obstacles established by annual restyling. In any event, jurisdiction could be retained by the court to permit either the FTC or the defendants to move for modification of the decree. If, for example, a substantial number of producers entered the market sooner than anticipated, the court might set aside certain portions of the injunctive relief. Conversely, if no entry was forthcoming, it might prolong the decree or take more drastic corrective steps, perhaps of a structural nature.<sup>205</sup>

203. Apparently, dual or multi-line retail automobile distribution is common in Europe where it is referred to as "the supermarket approach." *Hearings Before the Select Committee on Small Business on the Status and Future of Small Business*, 90th Cong., 1st Sess. at 431 (1967).

204. Turner has argued that extensive advertising by tight oligopolies create formidable barriers to entry and substantially increase concentration. He suggests that it would be quite appropriate to impose, for a limited time, absolute or percentage limitations on promotional expenditures of firms that have obtained undue market power through antitrust violations. Turner, *supra* note 159, at 93-96. See also p. 602 *supra*. A similar suggestion has been recently advanced by two antitrust economists. Asch & Marcus, *Returns to Scale on Advertising*, 15 ANTITRUST BULL. 33, 39-40 (1970). Mueller contends that government limitations of advertising expenditures by oligopolists would not raise first amendment problems. Mueller, *supra* note 2, at 89-90. Subsection (c) of the proposed Concentrated Industries Act of the White House Task Force on Antitrust Policy also suggests possible limitations on advertising expenditures. THE NEXT REPORT, *supra* note 11, at 66.

205. In *United States v. United Shoe Machinery Corp.*, 391 U.S. 244 (1968), the Supreme Court made it clear that an antitrust decree which has failed to accomplish its intended purpose of restoring effective competition may be modified to provide additional structural relief. The district court in the earlier *United States v. United Shoe Machinery Corp.*, case, 110 F. Supp. 295 (D. Mass., 1953), had rejected the government's request for divestiture. Following the Supreme Court's ruling that the initial decree was inadequate, the district court has recently entered a divestiture order. *United States v. United Shoe Machinery Corp.*, 1969 Trade Cas. 86,411 (D. Mass.).

Annual style change has been a characteristic of numerous other durable goods industries since the late 1940's. Significantly, concentration has increased more rapidly in this sector than in any other area of manufacturing. By 1966, style-changing industries exhibited the following 4-firm concentration ratios: home freezers—82%, typewriters—79%, washing machines—79%, vacuum cleaners—78%, refrigerators—72%, cameras—67%, computers—67%, and televisions—58%. *Hearings Before the Subcomm. on Antitrust and*

## Automobile Industry

If annual style change in the automobile industry is an unfair method of competition under Section 5 of the Federal Trade Commission Act, only the FTC can sue for relief.<sup>206</sup> This Note calls upon that agency to investigate and, if appropriate, to bring suit against this practice.

*Monopoly of the Senate Comm. on the Judiciary on Economic Concentration*, S. 89th Cong., 1st Sess., 1901-1905 (1965); U.S. DEPT. OF COMMERCE, ANNUAL SURVEY OF MANUFACTURERS: 1966, at ch. 11. In light of this Note's findings with respect to the automobile industry, an economic and legal investigation of annual restyling in these concentrated industries might also be in order. Significantly, the FTC is currently studying "style or nonfunctional" model changes in household appliances and other consumer products for evidence of "planned obsolescence." The Commission suggested that "the practice might run afoul of Federal antitrust laws as well as those against unfair or deceptive trade practices." N.Y. Times, March 28, 1971, at 40, col. 2.

206. The Federal Trade Commission has exclusive jurisdiction to enforce Section 5, 15 U.S.C. § 45 (1964). As a result, the Department of Justice cannot bring suit against alleged violations of that section. *Marquette Cement Mfg. Co. v. Federal Trade Commission*, 147 F.2d 589 (7th Cir. 1945), *rev'd on other grounds sub nom. Federal Trade Commission v. Cement Institute*, 333 U.S. 683 (1948). Apparently, private antitrust suits cannot be brought under Sections 4 (treble-damage actions) or 16 (injunctive relief) of the Clayton Act (15 U.S.C. §§ 15(a), 15(b), 26) for alleged violations of Section 5 of the Federal Trade Commission Act. See *Nashville Milk Co. v. Carnation Co.*, 355 U.S. 373, 376 (1958); *Atlanta Brick Co. v. O'Neal*, 44 F. Supp. 39 (E.D. Tex. 1942); *Rader v. Balfour*, 1968 Trade Cas. ¶ 72,709 (N.D. Ill. 1968). This does not prevent private parties, however, from calling upon the FTC to investigate and, if appropriate, to bring suit against the Big Three automobile manufacturers. See FEDERAL TRADE COMMISSION, PROCEDURES & RULES OF PRACTICE, 16 C.F.R. § 2.2: "Any individual . . . may request the Commission to institute an investigation in respect to any matter over which the Commission has jurisdiction" as long as the application sets forth "the alleged violation of law with such supporting information as is available . . . ."

**Statement for U.S. Senate Commerce  
Committee on Senate Bill S. 976**

# **AUTOMOTIVE BUMPER DESIGN IMPLICATIONS ON DAMAGEABILITY**



**Ford Motor Company  
Design Center**

**MAY 31, 1971**

## INTRODUCTION

The purpose of this report is to present to the U.S. Senate Commerce Committee pertinent facts relative to the impact of bumper design on automobile damageability as related to provisions of Senate Bill S. 976.

Specifically, this report will present additional and clarifying information on the design requirements, performance, and cost of an automobile bumper system capable of withstanding 5 MPH barrier or pendulum impacts without damage. The U.S. Senate Commerce Committee has received certain information and data on this subject, but, in our opinion, there are a number of points that need amplification.

At the outset, it should be made clear that we at Ford agree that significant improvement in the functional characteristics of modern automobile bumpers is required. In the last year and one-half there has been increasing concern among car owners with how easily their cars can be damaged, the high cost of repair, and rising cost of insurance. We share their concern because total cost of ownership is an important factor in customer satisfaction and subsequent car sales.

There is little question that the trend in recent years relative to bumper design has been toward more highly stylized configurations, integrated with the sheet metal and ornamentation. Widely varying styling workouts for various vehicles produced by the industry have resulted in bumpers which are not of uniform height, adding significantly to the damage problem in parking maneuvers.

## DEFINITION OF PROBLEM

About a year and one-half ago, Ford began seeking statistically valid data concerning the relative frequency with which individual car parts were damaged, and the speed at the point of impact that would cause the damage. The insurance companies, while complaining that there was a significant vehicle property damage problem in total, were unable to supply detailed data that would permit determining specifically the contribution of individual elements of vehicle design to damage levels. This information was needed in order to develop design changes that would reduce vehicle damage on a cost effective basis. To obtain these data, Ford undertook a detailed survey of nearly 20,000 vehicles that had been involved in accidents and were in body shops awaiting repair. This analysis was supplemented by duplication of the damage under test conditions where speed at the point of impact could be accurately measured. From this study, Ford reached the following conclusions:

1. 70% of all property damage accidents involved the front or rear of the vehicle. (40% involved front end, 30% involved rear ends.)
2. 60% of all front and rear end property damage accidents involved speeds at the point of impact equivalent to a 5 MPH barrier crash or less. 25% involved speeds of 2½ MPH or less — essentially parking encounters.
3. 60% of all front and rear end property damage accidents involved the corners of the vehicle, rather than being head-on (such as would be simulated with a barrier crash).



**Figure 1**

**Damage Done by Loaded Railroad Car Impacting Parked Car at 5 MPH**



**Figure 2**

**Damage Done by Loaded Railroad Car Impacting Parked Car at 5 MPH**

## CORRECTIVE ACTION PROGRAM

It was clear that an improved bumper system could play a significant part in reducing vehicle damage and hence the cost of repair. At the time this conclusion was reached at Ford, the 1973 model design was under way and plans for an improved bumper system were undertaken on the Ford and Mercury as these car lines were scheduled for substantial changes in that year. It was contemplated that improved bumper systems would be adopted on other car lines in 1974, or as soon as major retooling of front and rear end components could be accommodated within cycle plans.

During the last year, there has been a great deal of publicity about the bumper problem and considerable regulatory action both at the State and National level. The issuance of the federal bumper standard by the DOT on April 16, 1971 required some modification of Ford's bumper plans to assure that we would be in a position to comply with the bumper standards on all 1973 and 1974 models (if the change proposed by Ford for 1974 is adopted).

## BARRIER TEST

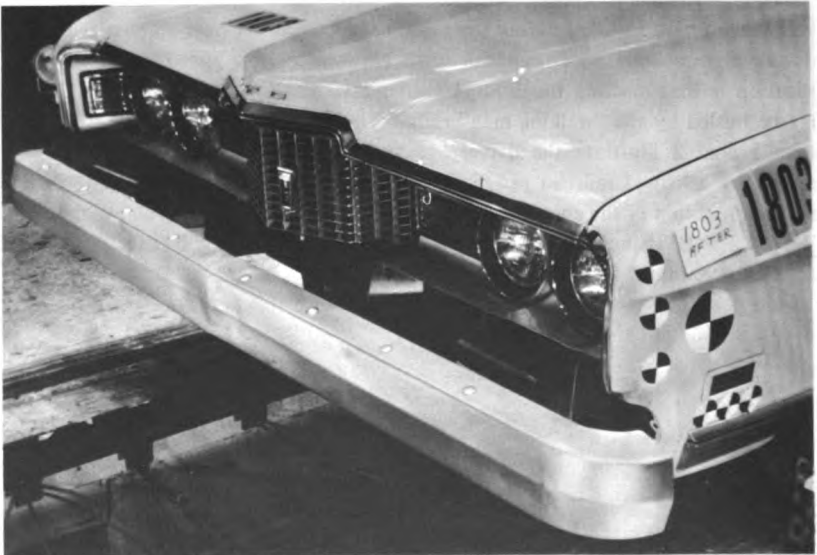
Before describing the specific components required to achieve a 5 MPH bumper system, we believe that some information relative to the barrier and pendulum test procedures would be helpful in putting the federal bumper standards in perspective.

Witnesses who have testified before the Commerce Committee have emphasized that a man can walk at a 5 MPH pace, and can impact a wall at this speed without injury. The implication is that meeting the 5 MPH barrier test with an automobile is "child's play." Don't be misled by the "walking man" simile. The mass of the object makes a difference. Figures 1, and 2 illustrate the damage to a parked automobile that will occur if it is impacted by a loaded railroad car moving at a walking pace — 5 MPH. The damage on impact is a function of the energy of impact which is a product of mass and velocity. ( $KE = \frac{1}{2} MV^2$ ). At a 5 MPH impact, a man generates 125 ft-lbs, a car 3,500 ft-lbs. and the loaded railroad car 190,000 ft-lbs.



**Figure 3**

**1971 Production Ford after 5 MPH Barrier Impact**

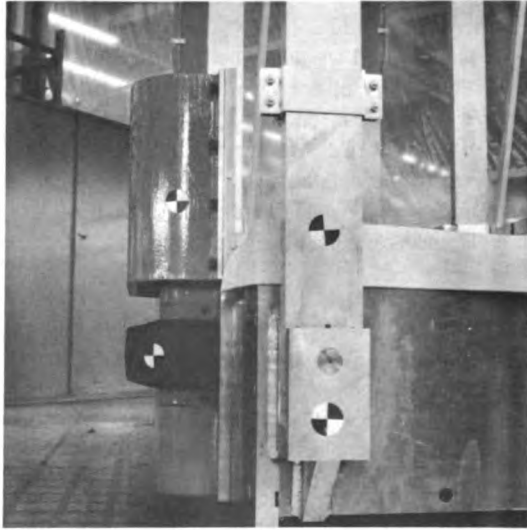


**Figure 4**

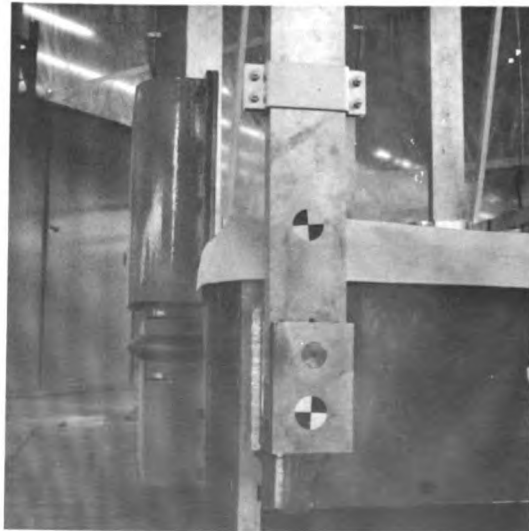
**1971 Ford with Energy Absorbing Bumper System after 5 MPH Barrier Impact**

Turning to the fixed barrier test for automobiles, figure 3 illustrates the damage done to the front end of a 1971 production Ford weighing about 4000 lbs. upon impact with a fixed barrier at 5 MPH. All of the energy of impact (nearly 3,500 ft-lbs) must be absorbed by deformation of the bumper and sheet metal. The damage is significant with bumper, hood, fenders and outer grille panels distorted. The results illustrated here are not significantly different than those reported to this committee by Dr. William Haddon, Jr. (In this test the center grille panel was undamaged, while the Insurance Institute for Highway Safety reported center grille replacement was necessary following the 5 MPH barrier test with a 1971 Ford Galaxie 500).

For comparison, figure 4 illustrates the lack of damage done following the same test procedure with a 1971 Ford equipped with the energy absorbing bumper system being developed for the 1973 model. Here the impact energy is absorbed by the bumper system and the car can withstand the 5 MPH barrier crash without significant damage.



**Figure 5**  
**Ford Proposed Pendulum Shape**



**Figure 6**  
**Pendulum Shape Specified by DOT**

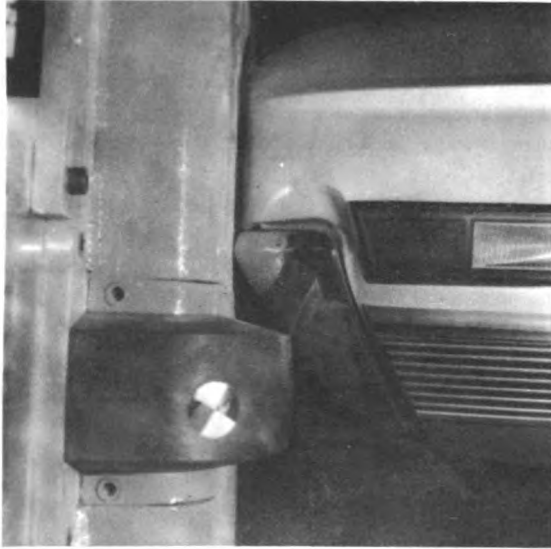
## PENDULUM TEST PROCEDURE

There has been some comment made relative to the requirements of the federal bumper standard which include the pendulum tests. Ford has endorsed the concept of the pendulum test because we believe it will assure a more effective bumper system for the consumer than a barrier test.

The pendulum test requirement will assure uniform bumper height and, therefore, correct the mismatch problem that is one of the most significant causes of low speed property damage. In addition, the pendulum test will establish bumper performance standards relative to corner impacts, a major part of the low speed collision damage problem.

With regard to the pendulum test procedure, I believe that a closer look at the pendulum configuration is in order to put the 1974 federal bumper standard in perspective. The weight-of-the-car pendulum is suspended from arms that allow it to swing into the car bumper. In conducting the test, the pendulum is pulled back far enough so that on a free swing after release it will be traveling at 5 MPH speed at the point of impact.

Figure 5 illustrates the side view of the pendulum, and demonstrates the shape of the impacting ridge — shown in black — that Ford has recommended to the DOT. This impacting ridge is blunter than that specified in the 1974 federal bumper standard (figure 6) and is more like another automobile bumper. In our opinion, the Ford impacting ridge shape will result in a fully effective bumper from a consumer standpoint.



**Figure 7**

**Minor Bumper Deformation Causes Test Failure**

**Contact constitutes failure (only the black ridge can touch)**

The 1974 standard specifies that it will impact both front and rear bumpers 8 times, 6 across the face and once on each corner ( $30^\circ$  angle). Only the impacting ridge (the black part of the pendulum) is allowed to contact the vehicle and if any part of the car (including the bumper) touches the vertical (or yellow) surface of the pendulum it constitutes a test failure. This requirement is really the controlling factor in the design of the bumper system, not the much publicized requirement that only safety related items (lights, fuel and exhaust system, hood and deck locks) function normally after the test.

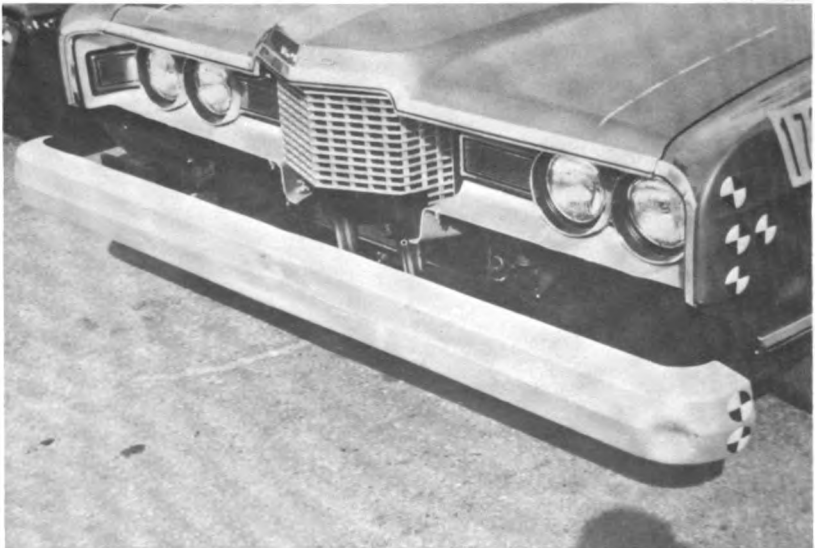
If there is any significant deformation of the bumper bar under the initial pendulum impacts, additional hits (up to a total of 8) will inevitably cause some part of the bumper or car to touch the vertical pendulum surface constituting a test failure. This type of situation is illustrated on figure 7. Here the pendulum impact from a prior hit has deformed the bumper enough so that on this hit, part of the bumper touches the vertical surface of the pendulum causing a test failure. In this example, the 1971 Ford bumper shape has been used. It is evident from this illustration that a bumper shape with a more vertical front face will be required to meet the federal standard.

For all practical purposes, the pendulum test requires a bumper design that will withstand repeated impacts without incurring any significant damage to the bumper or car components.



**Figure 8**

**1971 Production Ford after 5 MPH Pendulum Test – 8-Hits**



**Figure 9**

**Ford Energy Absorbing Bumper System after 5 MPH Pendulum Test – 8-Hits**

There has also been some confusion about the relative severity of a 5 MPH barrier test versus a 5 MPH weight-of-the-car pendulum test. In a barrier crash, all of the energy of the impact must be absorbed by the vehicle. Since the car is free to roll in the pendulum test, only part of the pendulum impact energy is absorbed by the car with the balance translated into movement of the car. The pendulum test has thus been criticized as providing a less severe test than a barrier impact at the same speed.

With the pendulum test, however, multiple hits are specified across the face of the bumper, and with an off-center hit, one energy absorbing strut must be capable of handling the full pendulum impact transmitted to the car without any assistance from the other energy absorber. The total system can, of course, handle higher impact load in the center because the load is divided between the two absorbers.

In total, a system that can withstand a 5 MPH weight-of-the-car off-center pendulum hit can also accommodate a 5 MPH barrier hit. The severity of the two tests are equal.

Figure 8 illustrates the results of the 5 MPH Ford pendulum test (after the specified 8 hits) with a 1971 production Ford. The damage is extensive; considerably more with the multiple pendulum hits than was experienced with the 5 MPH barrier crash. (See Figure 3).

Figure 9 illustrates the results of the same test procedure with the Ford energy absorbing bumper system. Only minor denting of the bumper bar was experienced. There was no basic damage to the car.

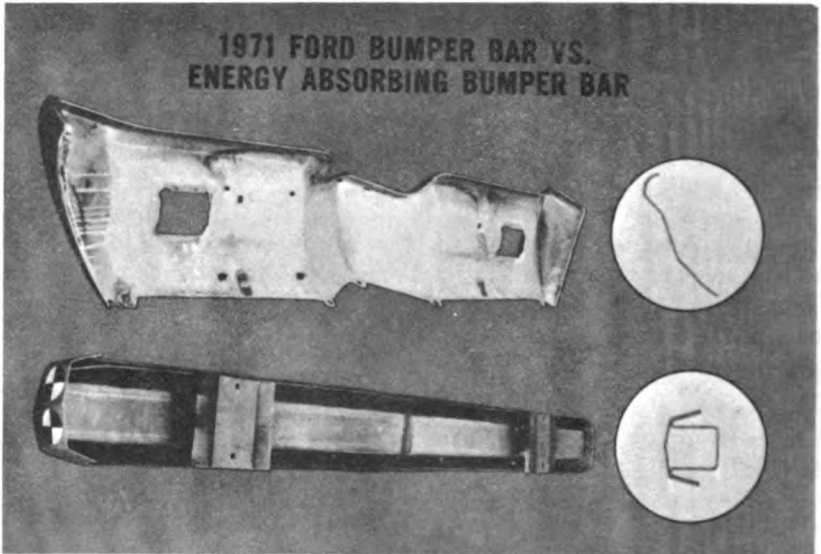


Figure 10

Energy Absorbing Bumper Bar and 1971 Ford Production Bumper Bar

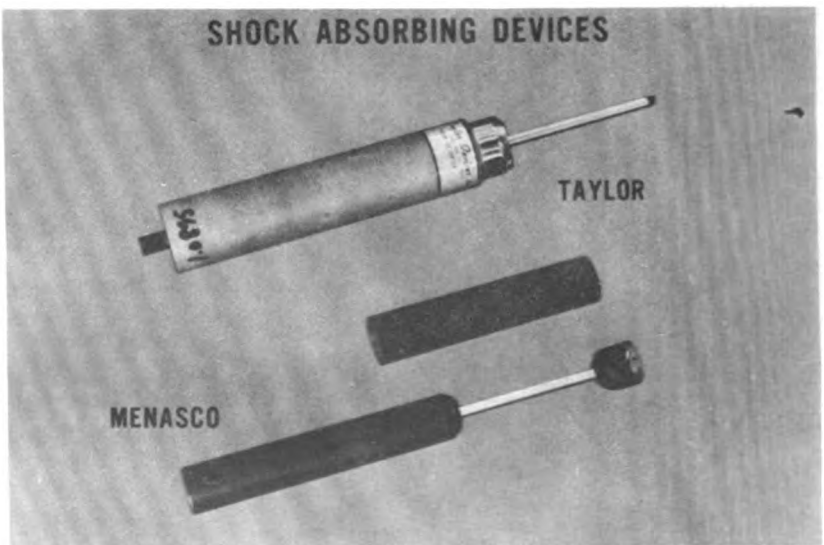


Figure 11

Taylor and Menasco Energy Absorbing Struts

## COMPONENT CHANGES — 5 MPH SYSTEM

Now let's take a look at the specific components that are required to make a 5 MPH bumper system work. Vehicle changes associated with the 5 MPH bumper system are related to (1) changes to accommodate the new components; (2) changes required because of increased impact loads imposed on the vehicle, and (3) modifications to accommodate the effect of added vehicle weight. The following specific changes are required on the full size Ford, but are typical of changes required on all car lines.

### Bumper Bar

Figure 10 illustrates the type of bumper bar being developed for the Ford energy absorbing system compared with the 1971 production bumper. Note the simple shape and heavy reinforcement of the prototype components. This heavy, boxed-in reinforcement design provides a much stronger impact bar, and when incorporated in the front and rear of the Ford car will add at least 80 lbs. over current production bumpers.

### Energy Absorbers

An energy absorbing bumper system requires that the bumper be mounted on some sort of shock absorbing device. There are three types of shock absorbing units under consideration for the Ford 5 MPH bumper system: (1) the energy absorbing strut; (2) a spring steel shock absorber, and (3) an elastomeric shock absorber. Each type will be described in more detail on the following pages. A pair of absorbers will be used to replace the 1971 bumper arms.

Shown in figure 11 are two examples of one approach to an energy absorbing system. One is designed by Taylor Devices, Inc., and the other by Menasco Manufacturing Corporation. Both absorb impact energy by forcing fluid through an orifice, similar to a conventional car shock absorber. These struts stroke about 3-1/2" under a 5 MPH impact. The Taylor design uses a liquid silicone fluid, while the Menasco strut uses a silicone which is solid at normal temperatures and pressures, but behaves as a liquid under impact loads.



**Figure 12**

**Ford Experimental Safety Vehicle after 50 MPH Barrier Crash**

Both the Taylor and Menasco struts can be designed to accommodate higher speed impacts with more stroke. In fact, a special set of Taylor struts were incorporated in a Ford experimental safety car that was subjected to a 50 MPH barrier crash. Mr. Taylor testified before this committee that these struts had withstood repeated 50 MPH impacts without damage to the struts and only minor damage to the car. It is true, the struts were not damaged in the 50 MPH crash test, but as shown in figure 12, the car was a total loss.

This crash test was one of the early evaluations of the ability of a unique vehicle structural design to be able to withstand a 50 MPH barrier crash while retaining the integrity of the passenger compartment. This portion of the test was successful with the windshield retained and doors remaining closed.

Passenger restraint systems used in this test proved inadequate, however, and recorded head accelerations of the "occupants" exceeded values which are generally considered to be the limits of human survivability. These problems are believed solvable with further design development.

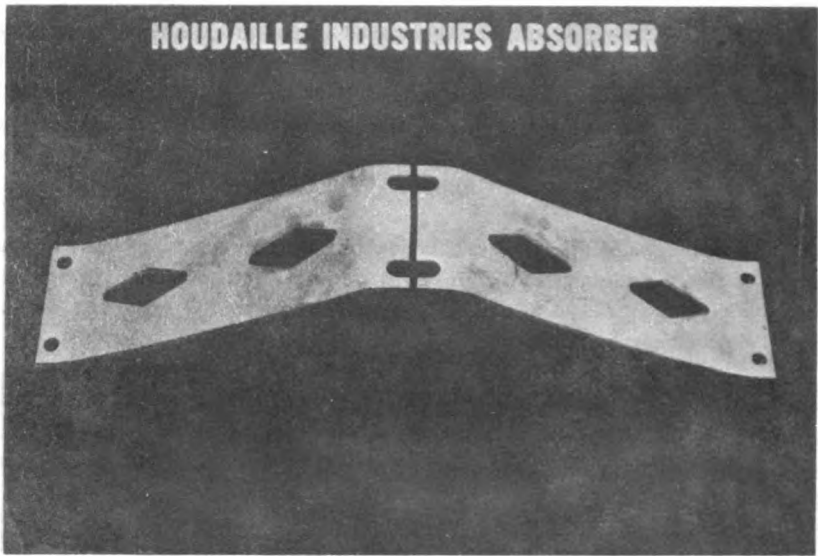


Figure 13

Houdaille Spring Steel Shock Absorber Device

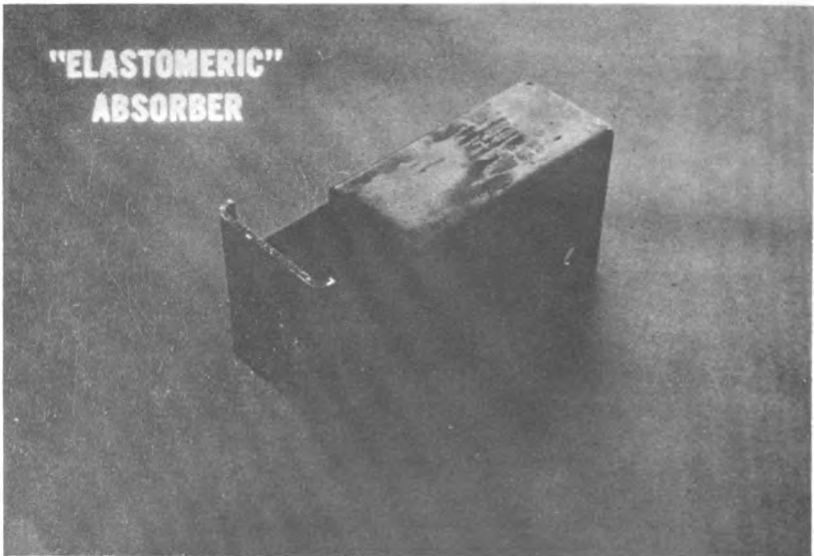


Figure 14

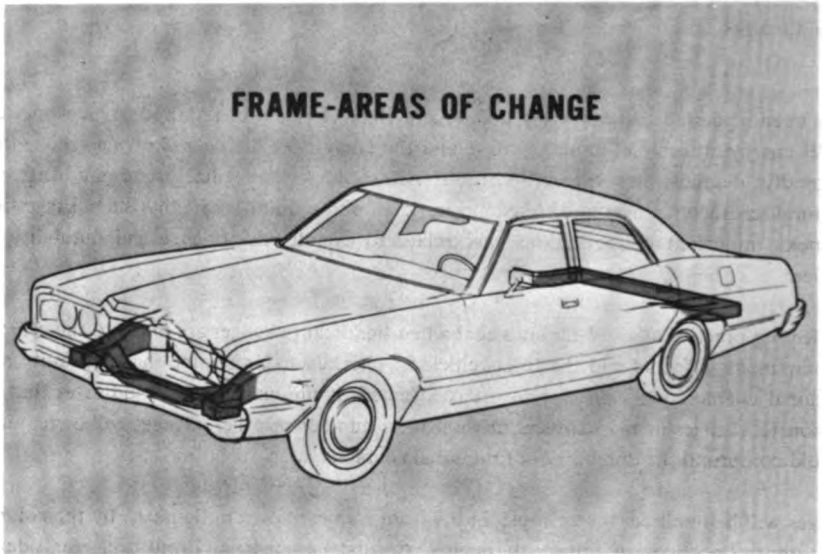
Elastometric Shock Absorber Device

Another approach to a shock absorber system is the spring steel hanger arrangement (figure 13). Technically, this is not an energy absorption device, but rather an energy storage system. This spring acts as a column that yields under impact load resulting in rather large deflection (3" to 4" at 5 MPH).

A third type of absorber is an elastomer system (figure 14) using rubber pucks moulded with steel inserts that function under load similar to an engine mount. Their load-deflection curve is essentially linear. This is a form of spring, and does not absorb energy. Similar devices have been used as railroad and ship bumpers for many years.

Each of the three energy management approaches perform the same shock absorbing function in the bumper system. The Taylor and Menasco struts absorb energy and, therefore, minimize, for a given deflection, the loads transmitted to the vehicle. The spring steel and the elastomeric devices store, rather than absorb energy and, therefore, transmit higher loading to the vehicle than an energy absorbing unit for the same deflection. This would tend to limit the impact speed for which a spring type device would be usable. At 5 MPH impacts, however, either an energy absorber or a shock absorber will function satisfactorily with both types reducing the loads transmitted to the occupant below those experienced with current production bumper systems under 5 MPH barrier impacts. These performance differences, as well as other factors such as durability, reliability and cost, are being evaluated by Ford to permit a final selection of the absorber to be used in the 1973 bumper system.

All of the absorbers require substantial brackets to provide secure attachment to the frame and bumper bar. Conventional bumper arms are, of course, deleted. The net increase in vehicle weight for four absorber units, two front and two rear with attaching brackets is about 20 lbs. over the conventional bumper hanger arrangements.



**Figure 15**

**Ford Car Frame Changes Required for 5 MPH Bumper System**

## Frame Changes

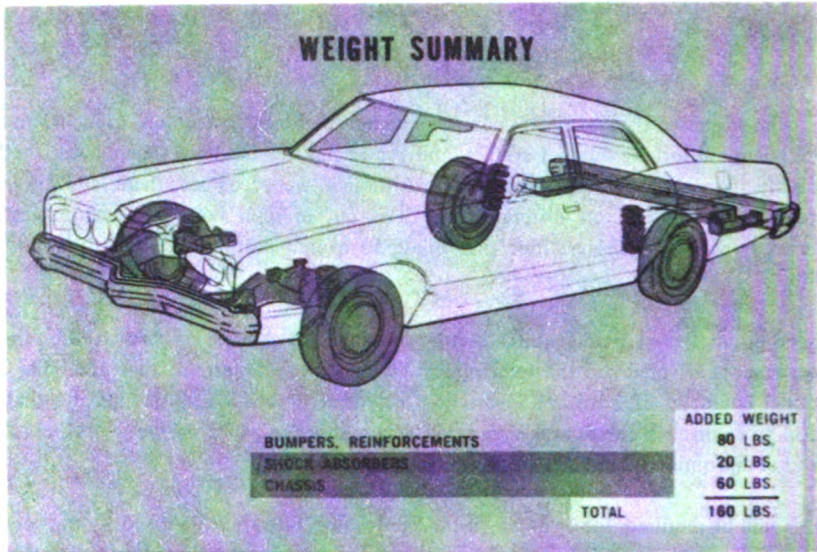
It has been suggested that no chassis component changes would be required to incorporate a 5 MPH energy absorbing bumper system, and the committee has been shown a vehicle that supposedly demonstrates this proposition. Although we recognize there are different structural characteristics on different cars, it is our opinion that any such suggestion overlooks important considerations that relate to overall performance and durability of vehicles.

Engineering practice at Ford requires that when significant changes are made to the vehicle, all components affected and the total vehicle be checked to determine that durability and functional characteristics are not adversely affected. Preliminary analysis indicates that, in addition to changes in the bumpers themselves, a number of other changes will be required to avoid compromising durability or functional characteristics.

Changes will be required, for example, in the Ford frame. Shown in figure 15 by the colored areas are the portions of the Ford frame that must be changed. Front and rear siderail configuration changes are necessary in order to accommodate mounting of the energy absorbing devices. In addition, the higher impact forces necessitate gauge increases and fully boxed section on the rear cross member as well as extension of the inner rear siderails.

The front end of the current Ford frame is of an "S" design, specifically constructed to efficiently absorb crush forces in a high speed crash. This design makes it necessary that the frame be modified to accommodate the requirements imposed by a 5 MPH bumper system.

The changes to adapt the frame to the new bumper system, and to strengthen the frame for higher impact loads will add about 25 lbs. to vehicle weight.



**Figure 16**

**Added Vehicle Weight with 5 MPH Bumper System (Typical Full Size Ford)**

### Other Chassis Changes

Other chassis structures, as in the case of frames, must be designed not only to withstand the anticipated maximum loading to which they may be subjected in severe service, but must have the durability characteristics to withstand the cumulative effect of such loads over the full life of the car. It is possible that impact loads from a 5 MPH bumper system could be carried without visibly distorting an unreinforced frame. However, the cumulative effect of bumper impact loads into the structure combined with the effect of continuing dynamic load encountered in vehicle operation could result in permanent deformation of the frame which could adversely affect front end alignment (resulting in tire wear and handling problems) and vehicle durability.

Changes to many other chassis components besides the frame are also essential to accommodate a 5 MPH energy absorbing bumper system and at the same time maintain current product performance capabilities. These include modified suspension springs for a heavier vehicle, revised engine mounts (addition of fore and aft restrictors) to withstand impact loading, and modified power steering for heavier loads. The increase in vehicle weight associated with these chassis changes which are required on the Ford car (exclusive of the frame) is 35 lbs. over the current production model.

To meet the federal and Ford standards on tire loading with the total added vehicle weight described above requires increasing tire size on most Ford body styles. Finally, the added vehicle weight necessitates brake modifications to assure that we do not deteriorate vehicle stopping ability with the heavier car.

### VEHICLE WEIGHT INCREASE

In total, chassis changes constitute a significant part of the task in adopting an energy absorbing bumper system to the Ford car. The design implications of these components are complex and interrelated, and not easily understood by someone not associated with the engineering details of performance and durability of the automobile. As summarized, figure 16 chassis component changes will add about 60 lbs. to the weight of the typical Ford car model, while the 5 MPH bumper and absorber system itself will add about 100 lbs. for a total weight increase of about 160 lbs.

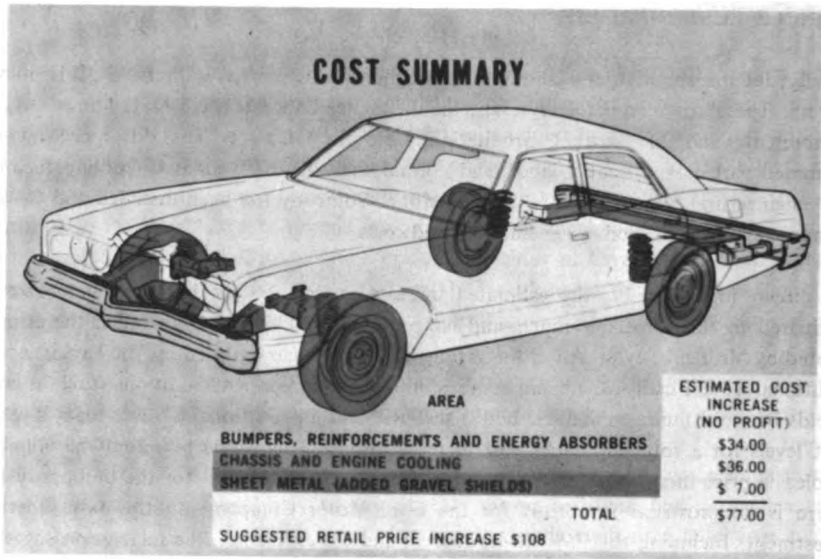


Figure 17

Cost Increase with 5 MPH Bumper System (Typical Full Size Ford)

## VEHICLE COST INCREASE

Finally, let me speak briefly about the cost increase associated with the 5 MPH bumper system. These cost estimates represent the difference between the 5 MPH bumper system components and the current production parts they replace. The difference includes estimated part cost, assembly labor, and normal write-off of fixed costs (tooling, facilities, and engineering). No profit to the Ford Motor Company has been included and the cost data include no allocation of general overhead costs.

As shown in figure 17, the estimated increase in cost of the bumpers and absorbers compared to the current bumpers and hangers is \$34. This closely parallels the estimate quoted by Mr. Paul Taylor. All of the various chassis changes (ignored by Mr. Taylor) add an additional \$36. Finally, there are some minor body component additions (such as gravel shields between bumpers and the body) that will add an additional \$7 over today's vehicle cost levels for a total estimated cost increase of \$77. This would represent the minimum wholesale price increase of the Ford car to recover the added cost for the bumper system. There is no provision for profit for the Ford Motor Company on the extra cost and investment. Including the 25% dealer margin and 7% excise tax, the increase in suggested retail price would be \$108 for the 5 MPH bumper system.

In this presentation, we have described the product changes and the cost effect of adopting a 5 MPH bumper system on the full-size Ford. Changes required on other Ford Motor Company car lines, ranging from the Pinto to the Lincoln Continental will vary in specific detail, but are expected to result in the same order of magnitude of weight and cost increase. The Ford car is believed typical of the average.

**SUMMARY**

In conclusion, summarizing the major points made in this presentation:

1. Bumper design in recent years has emphasized appearance at the expense of function. Improvements in bumper function are required to reduce low speed accident damage, and significant changes will be made starting with the 1973 model.
2. We support the federal bumper standard for 1973 and 1974 with the revisions proposed by Ford, and believe that with the 1974 model this standard will assure an essentially damage-free vehicle under the 5 MPH test conditions.
3. A 5 MPH bumper system applied to the front and rear of the Ford car will increase the weight of that vehicle by over 160 lbs., and increase the retail price to the consumer by \$108, with no increase in profit for the Ford Motor Company.

We are hopeful that the information presented in this report has contributed to a better understanding of the bumper situation, and has increased the committee's level of confidence that bumper systems that comply with the 1974 federal bumper standard will achieve fully the level of bumper performance being sought in S.976.

The Ford Motor Company appreciates the opportunity to present this additional information on bumpers relative to Senate Bill S.976.

## SUPPLEMENTARY STATEMENT OF THE FORD MOTOR COMPANY

The purpose of this statement is to supplement Ford's testimony of May 10, 1971, before the Senate Commerce Committee on S. 976, the proposed Motor Vehicle Information and Cost Savings Act.

Our objectives in submitting this supplementary statement are three-fold. First, we hope to clear up some of the misunderstanding that we feel has developed -- partly as the result of apparently conflicting testimony -- on the subject of bumper systems.

Our second and most important objective is to re-emphasize our principal concerns over major aspects of the proposed legislation that we believe may have been obscured by the attention that has been given to the relatively narrow subject of automotive bumper performance. In this connection, we shall offer suggestions for changes in the bill that we believe will contribute to the achievement of its basic goals.

Finally, we are submitting Ford's comments on two proposed amendments to S. 976, as promised during our May 10 testimony.

Bumper standards form but one aspect of the comprehensive proposal before the Committee. In fact, inclusion of a bumper standard in this legislation appears unnecessary and undesirable. It is unnecessary in view of the fact that, since the introduction of the bill, the safety specialists in the Department of Transportation have promulgated a standard for bumpers which, with amendments we have suggested, would be more rigorous than the statutory standard proposed in S. 976. We think the statutory provision is undesirable because it mandates both the level of the standard and the test to be utilized; i.e., a barrier test. If the bumper standard remains in S. 976, the result would be a barrier test for 1973; a barrier test plus an added pendulum test for 1974, and then, by statutory mandate, a barrier test only for 1975. It would be difficult to square such a result with good regulatory procedure.

In addition to this observation on bumper standards, we are including with this statement as Attachment A a report on bumper systems and standards which seeks to clarify the questions which have been raised on this subject during the Committee's hearings.

We turn now to some of the other major aspects of the proposed legislation. Currently, S. 976 is drafted as an amendment to the National Traffic and Motor Vehicle Safety Act of 1966 -- an act intended and designed to achieve life-saving goals of highest national priority. S. 976, on the other hand, is intended to save money, not lives, and this goal clearly should have a lower priority. In our judgment, this difference suggests two important reasons why any new legislation on vehicle damageability should be drafted to stand alone on its own merits and should be entirely separate from the Safety Act.

The first reason is that the assignment of a new set of functions to the National Highway and Traffic Safety Administration of the Department of Transportation would dilute the resources being devoted to the objectives of both the Motor Vehicle Safety Act and the Highway Safety Act, it would seem especially unwise to propose expansion of its responsibilities to include lower-priority purposes.

Our second reason for advising against passage of S. 976 as an amendment to the Safety Act is that the intermingling of safety and damageability provisions in a single act would tend to becloud the meaning of both sets of provisions for manufacturers and regulators alike. The inclusion of damageability provisions in the Safety Act would give them equal importance with the safety provisions of the act and it would be difficult to determine which should legally prevail in case of conflict between them. These are problems that cannot necessarily be solved by more careful drafting of the bill. It would be easier to assure that safety considerations will prevail over damageability considerations if these two goals are dealt with in separate legislation. In any event, however, it is essential that damageability legislation include language which makes it clear that vehicle safety will prevail whenever there is a conflict.

In our testimony of May 10, we endorsed several provisions of S. 976, with suggested changes intended to make these provisions more effective in serving the broad purposes of the bill. With the changes we have suggested, we support the proposal to require a study of the feasibility of determining comparative risk of personal injury in different models of cars. We also support, with certain recommended changes, the provisions regarding vehicle safety inspection and uniform certificates of title.

Our principal concern is with the provisions of S. 976 that would authorize the establishment of standards to reduce vehicle damage and to facilitate inspection and repair. We do not see how these standards would result in the cost savings to consumers that are referred to in the title of the bill. As we stated in our May 10 testimony, we believe that the standards authorized by the bill -- along with associated testing and reporting requirements -- could add substantially to the price of new cars. The consumer will benefit only if the savings he realizes through reductions in insurance premiums and out-of-pocket costs are greater than the increase in new car prices.

The legislation before the Committee fails to assure insurance premium reductions. Indeed, the most it calls for in this connection is a report to Congress on the actions -- or lack of actions -- by the insurance industry. The bill also fails to require that any standards established under its authority be based on a finding that the resulting savings to consumers -- in the form of lower insurance and repair costs -- will be greater than the resulting costs to consumers in the form of higher new car prices. As far as we know, there has been no discussion before the Committee of the possible nature of repairability and damageability standards other than bumper standards. Nor has there been any consideration of the possible savings and costs resulting from such standards.

We believe that a better way to achieve the goal of reducing consumer costs, as we suggested on May 10, would be to strengthen the consumer information provisions of S. 976. Ford would support legislation requiring the Secretary of Transportation to undertake a study of the feasibility of developing methods designed to allow a determination and comparison of the susceptibility to damage of passenger motor vehicles involved in traffic accidents. Under this recommendation, the Secretary would be pursuing the problem of vehicle damageability in the same manner as the bill proposes that he tackle the question of comparative risk of personal injury or death to vehicle occupants.

Upon satisfying himself of the feasibility of such methods, the Secretary would then be in a position to obtain and make available to consumers information they otherwise would not have -- information that would enable them to choose among different makes and models on the basis of susceptibility to damage and costs of insurance.

If differences in susceptibility to damage result in insurance rate adjustments -- and this is a very important "if" -- the consumer who wishes to reduce his insurance and probable accident repair costs will be able to do so. In addition, this

approach would preserve what many of you have called for, namely, competition among the manufacturers in the design of cars that appeal to cost-conscious consumers. If, in fact, many consumers will be drawn to those makes and models which offer maximum savings in insurance and accident repair costs, the manufacturers will be forced to compete vigorously with each other on the basis of minimizing the damageability of their products.

In order to establish procedures to allow valid comparisons, the Secretary must find some way to assure that vehicle differences are reflected in insurance premium differences, and that both kinds of differences are reflected in the comparative data to be made available to consumers.

It seems clear to us that the present provisions of the bill with respect to insurance premiums are entirely inadequate to achieve this result. The bill places no obligation on the insurance companies to adjust premiums to reflect vehicle differences, and it places no obligation on the Secretary other than providing information to the insurers and observing and reporting the extent to which they make use of that information.

In our judgment, this is a basic flaw which must be remedied before there is any chance that the bill will have its desired results.

Devising a procedure to determine comparative damageability will not be an easy task. The procedure should, of course, correlate closely to the real world, and the real world involves a multiplicity of accident situations including impacts between different makes and models at various speeds and various car locations, as well as impacts between vehicles and other objects.

The procedure must recognize this complexity. It must be accurate both in order to save money for consumers and because it could have a major impact on the sales of the various manufacturers. At the same time, however, if the method itself is unduly complex and costly, it will defeat the basic goal of cost reduction.

In our opinion, a good method -- which combines accuracy with efficiency -- need not necessarily be confined to "tests and test procedures" but could include analysis based, for example, on computer models. We, therefore, suggest that the Secretary be authorized to establish "methods" rather than "a system of tests and test procedures".

The requirement that production versions of each make and model be tested at several different speeds is unnecessary and would be unduly costly and burdensome. The testing burden would be especially heavy because it would have to be completed within a few weeks after the start of new model production in order to have the information available to consumers when the new models go on sale. As we suggested on May 10, we believe that the industry should be permitted to use the same reporting procedures, with respect to damageability, that it is now permitted to use in reporting consumer information under the regulations issued by the Safety Administration.

Subject to appropriate regulatory criteria and procedures, the Secretary should be empowered to specify the information he needs. The manufacturers should be free to decide how to develop that information, whether through crash tests of production cars or of prototype models or through engineering analysis or in some other way. The information reported by the manufacturers would, of course, be subject to verification by the government.

Any manufacturer who furnished false information would be vulnerable to penalties of law as well as to public censure. The manufacturers would therefore be under pressure to report information that would conservatively represent the performance of all their production vehicles. Such information would be more reliable and more useful to consumers than the precise results of tests of a limited number of vehicles.

This concludes our comments on the major provisions of S. 976. During our May 10 testimony before the Committee, we promised to provide certain additional information, including Ford's comments on several proposed amendments to S. 976. Attachments B and C to this statement present Ford's position on the proposed amendments dealing with odometers and with vehicle emissions testing.

The additional information we promised to provide on May 10 on the relationship between automobile retail and whole-sale prices as established by the Bureau of Labor Statistics and on the number of Ford engineering personnel working on vehicle safety is now being developed and will be filed with the Committee very shortly.

COMMENTS OF FORD MOTOR COMPANY  
ON AMENDMENT NO. 68 TO S. 976 CONCERNING ODOMETERS

OBJECTIVE

The purpose of this paper is to state Ford Motor Company's position with respect to the amendment to Bill S. 976 that would prohibit the disconnecting or turning back of odometers with the intent to defraud purchasers of motor vehicles.

DISCUSSION

Ford Motor Company supports legislation that would prohibit altering odometer readings with the intent of defrauding the public. We believe that a uniform procedure throughout the United States would be in the best interest of all. Ford believes, however, that it would be more appropriate to enact odometer legislation as a separate entity rather than as an addition to the National Traffic and Motor Vehicle Safety Act of 1966.

Ford Motor Company seeks to prevent odometer rollbacks and warranty coverage is voided if the readings are altered so that true mileage cannot be ascertained. In addition, the Ford Warranty and Policy Manual directs dealers, when replacing speedometer heads, to set the new head to indicate the mileage recorded on the old head at the time of replacement.

Accurate odometer mileage is necessary to permit proper periodic and preventative maintenance in areas such as oil changes, emission system checks and parts replacement, oil filter and air filter replacement, tune-ups and other routine maintenance. In addition, incorrect car mileage may seriously mislead or misrepresent the value of a used car in negotiating a proper price.

In the past few years, progress has been made with tamper-resistant odometers with the adoption of non-reversing shafts, die marking of odometer rolls, roll separator indicators, and rearrangement of components to deter tampering. In spite of these improvements, however, attempts at odometer rollbacks continue.

Ford supports the various sections in the proposed legislation with clarification, and/or modifications to Sections 604 and 608. With respect to Section 604 that covers the actual

disconnect, reset or alteration of odometers, a number of vehicles are driven for quality audit purposes at the assembly plant prior to shipment to the dealer. These vehicles generally do not have an odometer in operation. The mileage normally accumulated is minimal and generally a separate speedometer indicating device and possibly other instrumentation is attached. We believe that the proposed legislation is not intended to reach such practices that are related to improved customer and dealer satisfaction. To remove possible ambiguity as to its meaning, the phrase "After completion of assembly of the vehicle, including ancillary tests by the manufacturer, it shall be unlawful ..." should be added to Section 604. This would have the effect of clarifying the applicability of provisions of Sections 605 and 608 with regard to the obligations of the manufacturer. Further, insistence on having the odometer connected during the conduct of quality audit tests could create a question as to the expiration of the warranty period.

In the absence of such clarification, Ford believes that Section 608 as presently written would be objectionable to manufacturers for it requires a manufacturer of new motor vehicles to supply a form to the dealer indicating mileage recorded. Most new vehicles leaving the assembly facility have little or no mileage recorded on the odometer. It would seem to us that the benefits and/or protection to the consumer would not justify the added cost to prepare documents prior to the first retail sale of a new vehicle. We recommend that recording of mileage be made at the time of retail sale between the dealer and the buyer.

Ford strongly urges that federal legislation on the control of odometers preempt state laws to the extent that those laws are inconsistent with the provisions of the final federal legislation. Although many states have passed odometer laws, some of this legislation is not consistent between states and we believe that uniformity is necessary throughout the country in order that manufacturers may continue to work toward optimum tamper-resistant systems.

#### RECOMMENDATION

The Ford Motor Company is in accord with the aims and objectives of the proposed odometer legislation and fully supports federal legislation in this area. We recommend, however, that final legislation provide the manufacturer with the flexibility to selectively test-drive vehicles at assembly plants without violation and that it is unnecessary to require that manufacturers supply a document indicating actual mileage of new vehicles. Instead, this could be accomplished by recording the mileage when the car is delivered by the dealer.

Further, it is the view of Ford that the end sought to be achieved by the proposed odometer legislation would be best served if it stood as separate legislation and with enforcement possibly under the Federal Trade Commission rather than as an addition to the National Traffic and Motor Vehicle Safety Act of 1966. The Federal Trade Commission is, of course, the federal agency which is primarily charged with the responsibility of preventing fraud on the consumers -- the purpose of the proposed legislation.

COMMENTS OF FORD MOTOR COMPANY  
ON AMENDMENT TO S. 976 CONCERNING THE  
INSPECTION OF VEHICLE EXHAUST  
EMISSION CONTROL SYSTEMS

As amended, S. 976 provides for mandatory inspection of exhaust emission control systems at specified intervals.

We regard this amendment as both unnecessary and undesirable; unnecessary because, by the Clean Air Amendments of 1970, Congress vested similar authority in the Administrator of the Environmental Protection Agency, and undesirable because it would diffuse authority and, as a result, undercut the centralization principle inherent in Reorganization Plan No. 3 of 1970.

Discussion

Title II of the Clean Air Act deals with emissions from moving sources on a comprehensive and exclusive basis. The obligations of vehicle manufacturers are spelled-out at each stage of the process; s.g., research and development (Section 202(b)), prototype testing (Section 206(a)(1)), production (Sections 206(a)(2) and 207(a)), and vehicles in actual use over their useful life (Section 207(b)). The amendment at page 15 of S.976 represents an unnecessary and undesirable departure from the plan followed by Congress since 1965 of dealing with the vehicular emissions problem on a unified and comprehensive basis in a single law.

As amended by PL 91-604, the Clean Air Act requires the Administrator of the Environmental Protection Agency to prescribe an emissions performance warranty at such time as he determines, among other things, that "inspection facilities or equipment are available" (Section 207(b)). As a matter of policy, Ford Motor Company has consistently supported periodic maintenance of engines and emission control systems. The recent amendments of the Clean Air Act create, for the first time, an incentive for owners to maintain the emission control systems with which their cars are equipped. If additional legislation is required to implement the objective of the amendment at page 15 of S. 976, we respectfully submit that it should take the form of an amendment to the Clean Air Act.

Consistent with Congress' method of dealing with the problem, the Environmental Protection Agency recently was created and vested with broad authority to deal with a wide range of air pollution problems. To the extent that the amendment at page 15 of S. 976 would inject another Executive Department into the picture, it would have the undesirable effect of eroding the principle of centralizing authority and responsibility in the hands of a single agency.

Recommendation

In light of the unnecessary and undesirable consequences described above, we recommend that the proposed amendments to page 15 of S. 976 not be approved.

# AUTOMOBILE INSURANCE REFORM AND COST SAVINGS

TUESDAY, MAY 11, 1971

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met, pursuant to recess, at 10 a.m. in room 5110, New Senate Office Building, Hon. Frank E. Moss presiding.

Present: Senators Hart and Moss.

Senator Moss. The subcommittee will come to order.

We continue our hearings today on the several bills that are before the subcommittee, and we have some very outstanding witnesses to hear today.

Our first witness will be Mr. Robert Pitofsky, Director of the Bureau of Consumer Protection of the Federal Trade Commission.

I would ask Mr. Pitofsky to come forward and sit at the table and to identify the gentlemen who accompany you and proceed.

**STATEMENT OF ROBERT PITOFSKY, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION, WASHINGTON, D.C.; ACCOMPANIED BY JOSEPH MARTIN, JR., GENERAL COUNSEL; AND MORTON NEEDLEMAN, ASSISTANT TO THE BUREAU DIRECTOR**

Mr. PITOFSKY. Thank you, Senator.

I am accompanied today by Joseph Martin, Jr., the General Counsel of the Federal Trade Commission, and Morton Needelman, Assistant to the Bureau Director in the Bureau of Consumer Protection.

Mr. Chairman, in response to your invitation, I am pleased to testify before you on S. 976, the Motor Vehicle Information and Cost Savings Act.

This bill would permit the Department of Transportation to set property loss reduction standards, and establish the machinery for the creation of a nationwide system of diagnostic centers to inspect for manufacturing faults and inadequate repairs. The Commission endorses the objectives of the bill.

At this point, I would like to read into the record the Commission's statement on this. Let me note, however, that the statement has been submitted to the Office of Management and Budget but there has been no time to receive comment from them on the statement.

This is in response to your request of March 8, 1971, for the Commission's comments on S. 976, 92d Congress, 1st Session, a bill "To amend the National Traffic and Motor Vehicle Safety Act of 1966 in order to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes."

(1399)

The purpose of this bill is to establish the mechanisms for stimulating automotive design changes which will reduce the cost of normal collisions. The bill directs the Secretary of Transportation to develop tests for the susceptibility of automobiles to damage by collisions; to establish property loss standards; and to require energy absorbing bumpers which will withstand 5-10-15 mph collisions. The Secretary must publish the information gained from the tests and disclose his findings to insurance companies. Manufacturers, besides testing their vehicles and complying with the standards, must distribute to prospective purchasers information about their automobiles, including the collision withstanding capabilities and insurance costs. The bill also provides for cooperation with state and local governments and for the inspection of automobiles by independent inspectors prior to sale.

The Commission supports this regulation which could be an important first step in producing better designed cars which will reduce economic loss from accidents. This loss is a significant problem for consumers. Constantly inflating insurance costs alone are enough to suggest a thorough examination of methods to reduce the cost of normal collisions. Since there appears to be some evidence that design changes will go a long way towards remedying the situations, it seems imperative that the Federal Government assume responsibility for stimulating these design changes.

The agency entrusted with the Government's responsibility is the Department of Transportation. It is vested with the authority to study methods which might contribute to loss reductions. By publishing these studies and establishing standards based on them, it will use both competitive and regulatory pressures to encourage necessary changes. The Commission believes that responsibility under this bill is properly placed. The Department of Transportation is developing an increasing expertise in the regulation of the automobile industry.

The Commission endorses the objectives of the bill and considers it a potential boon to automotive customers, but it believes that the suitability of any particular legislative proposal should be considered by the Secretary of Transportation. Thus, the Commission suggests that the specific comments of the Secretary will be of greatest assistance in the deliberation of this bill.

That ends the Commission's statement on this matter.

Today, speaking as a member of the Commission's staff but emphatically not for the Commission, I propose to outline briefly my views on why legislation of this kind is needed to meet the severe consumer problems of mounting repair costs and defective cars.

At the outset, let me note that while the staff of the FTC does not have engineering expertise, we are aware of consumer needs in this area. Since at least the early 1960's when the FTC's warranty investigation began, the staff has continuously monitored consumer complaints about cars. Presently, we receive about 250 complaints a month indicating consumer dissatisfaction over defective new cars, unsatisfactory warranty performance, or poor repair work. In addition, our computer printout of complaints received by major law enforcement agencies in six major urban areas indicate that the problem of defective cars continues to be an overriding concern to consumers.

The Commission's 1970 Automobile Warranty Report and the proposals it contained largely reflected what the staff has learned about the growing sense of consumer helplessness and frustration over poor auto performance. At the conclusion of the warranty report the Commission recommended an Automobile Quality Control Act which would create a statutory obligation for manufacturers to design and build cars which, in all respects, would meet minimum standards of quality. In making this legislative recommendation, the Commission concluded that neither the competitive structure of the automobile industry nor the limited real bargaining power of consumers were likely to produce warranties which meet the problem of defects in new cars.

By the same token, it is my view that the regulatory and competitive

pressures contemplated by S. 976 can help to reduce the risk of economic loss. We cannot rely on industry alone to generate these improvements for as several students of the automobile industry have observed, by often engaging in frivolous year-to-year styling competition, the manufacturers may be largely responsible for creating these risks in the first place.

As for the argument that consumers may not be willing to pay the added costs which allegedly arise from design changes required under these standards, this assumes that rationally designed parts are more expensive than those now imposed on the public. I have seen no evidence that this is true. Moreover, even if the argument were valid, it overlooks the fact that consumers may be perfectly willing to pay a moderate increase in price for preventive engineering at the manufacturing level rather than subject themselves to the risk of enormous post-collision costs and increased insurance premiums.

As it happens, the plight of the consumer who is faced with post-collision bills is compounded by the fact that the cost of repairs depends upon the effectiveness of competition in the multistage system under which crash parts are now sold.

The Commission is deeply concerned about the alleged serious imperfections in competition in both the manufacturing and distribution of crash parts and how these imperfections may have contributed to the annual bill of billions of dollars for crash-related repairs.

As former Chairman Weinberger indicated in last year's Senate hearings, the staff of the Commission is now investigating the extent to which restrictive practices have eliminated competition at the manufacturing level as well as competition between independent body shops and franchised dealers.

Given these facts—an imperfect competitive climate, ever increasing costs, and an increase in consumer dissatisfaction—I believe it is essential that Congress legislate in this area.

As for the bill itself, I endorse the basic concept of a uniform Federal bumper standard. It is not feasible to impose varying and perhaps conflicting State standards on the auto industry. However, since some States may take the lead in proposing effective bumper legislation, it would be a substantial setback if the Federal law were so written to allow a permissive standard which could result in less consumer protection than would be available under effective State statutes.

While I do not profess to have any engineering expertise, I am impressed by a respectable body of expert opinion that holds that the standard set out in section 125(c) of the bill, that is, 5-mile collision by 1975 with minimum prescribed damage as determined by the Secretary, may be within current design capability, or, in any event, will be outdated by 1975. Whether this is true or not, as a matter of policy, I would not attempt to predict the state of the art in the future by adopting a specific standard.

I recommend, instead, that the bill contain a mandate for the Secretary to write bumper standards but that no specific standard should be set: there is always the danger that such a standard can become the maximum with the result that technology will be frozen with no incentive to advance. It seems to me that the public interest is best served by leaving the specific standard and effective date open, leaving it to industry, insurance companies, and consumer advocates to present their

most persuasive technical arguments to the Secretary about costs and engineering capability.

I also support the concept found in the bill of establishing tests and then subsequently rating and publishing reliable comparative data on the relative susceptibility of each make of car to damage from collisions. Dealers should be required to give new-car purchasers this information and the Department of Transportation should publicize it in plain language.

I believe comparative data is precisely the kind of information which consumers need in order to make a rational choice among competing products, and I would welcome the day when an advertiser boasts on national television that the latest results show that his particular model has the lowest incidence of collision loss.

It has been our experience that the development of this kind of informational competition should be encouraged as an alternative to either absolutely irrelevant advertising or a rivalry based upon groundless or deceptive claims which eventually require FTC intervention to deflate the rhetoric.

First, it represents a desirable form of private regulation in the sense that a competitor's unsubstantiated boast of uniqueness or superiority can be debunked by a few well-publicized statistics which will do the job faster than any legal process.

Second, this kind of disclosure may quickly produce pressure for actual change even though the general consumer population may not be influenced by the information. All that is really necessary is that comparative collision data influence the purchasing habits of some consumers. If the number is not insignificant, the message will not be lost on the decisionmakers in Detroit and the result could be improved cars for the entire population in short order.

We have seen this phenomenon occur already in the design area where a significant, although by no means overwhelming, majority of the population has indicated a preference for smaller compact cars. The response of the manufacturers to the influence of this segment of the population has resulted in the availability to all of a greater choice in car sizes.

Turning to the section of the bill which would establish a uniform titling code, I believe that is desirable to meet the national problem of reducing car thefts and to aid in locating cars which are recalled by the manufacturers for safety defects.

Finally, I support the objective behind title V of the bill which requires, before sale and after repair following crashes, that all cars, new and used, be inspected for vehicle performance by an independent diagnostic center. Certainly, the facts presented by the Commission in its warranty report in support of federally imposed minimum standards of quality, durability, and performance argue equally for this more limited proposal—presale independent testing. The warranty report said:

1. Inadequate quality control at the plant and poor predelivery inspection procedures has resulted in a substantial failure by the automobile industry to meet its obligation to provide the public with defect-free cars.

2. The industry response to consumer complaints about the quality of cars has been to issue formal warranties, but due to inadequate com-

pensation for warranty work and other factors, express warranties have proven to be largely illusory in protecting consumers. And while the consumer may have a legal remedy under implied warranties, litigation is far too expensive, too time consuming, and too mysterious and uncertain a procedure for all but a handful of purchasers to pursue to a successful conclusion.

3. Redress of legitimate consumer complaints through existing Government machinery such as invoking section 5 of the Federal Trade Commission Act is of limited utility. For example, we have no evidence that the handful of Commission cases against the most egregious deceptions in the auto repair field, including those involving unnecessary repairs or repairs never made, have substantially improved the overall quality of service.

Complaints followed by extensive litigation do not remedy the fact that the Commission possesses neither the physical facilities nor the technical expertise required to conduct an effective program of monitoring quality control and performance. This does not mean that we have abandoned the auto field—we are taking a hard look again at current warranty and advertising practices for the purpose of assessing realistically what we can do. But we know already that the Commission's procedures, facilities, and resources are inadequate to carry out a program under which the manufacturers, dealers, and repairmen could be held to appropriate standards, and other alternatives must be considered.

I believe the provision for inspection in S. 976 may be a step in the right direction in eliminating defective cars; assuming, that is, that defects in existing State inspection systems are also eliminated.

To the extent that the inspection provision covers sale of used cars, this represents a significant breakthrough for the poorest segment of the consuming public who have traditionally been victimized by sharp practices. And all segments of the consuming public should benefit from the provision in the bill which would require that repairs on safety-related parts be checked out after crashes.

This bill says, in effect, as the Commission said in its warranty report, that in present-day America where the automobile is no longer a luxury—it is the only available or practical means of transportation for millions—government must assume a positive role in seeing that our citizens get defect-free cars which can be maintained at reasonable costs. I agree with this purpose of S. 976.

Thank you very much.

Senator Moss. Thank you, Mr. Pitofsky, for that very good statement. We are glad to have it.

You mention in your statement that repair complaints were among the most frequent type that come into the FTC and other consumer protection agencies.

Do you think that diagnostic inspection would improve the complaint frequency by helping the mechanic to locate the items that need repair and by giving the consumer assurance that he is not being bilked?

Mr. PITOFSKY. I think if those centers are run competently that it would reduce those complaints. It would catch those complaints at an earlier point, so that they would not develop into the kind of consumer dissatisfaction that we see in complaints sent to our agency.

Senator Moss. What is your opinion of the provision that would prohibit the inspection agency from also being the service agency to make the repairs? Do you think this gives the consumer protection, or does it increase costs and it, therefore, would be undesirable from that standpoint?

Mr. PITROFSKY. I am somewhat hesitant to take too definite a position in this area. I think there are some open issues about these diagnostic centers. For example, what will the costs be? It would be unfortunate if the cost for inspection of cars at one of these centers turns out to be something like \$15 instead of \$2.50. I think there are questions relating to serious consumer inconvenience if the centers are not run efficiently, and also questions about whether they could best be operated independently. My inclination is that they should be independent, but I have not really given that particular matter a great deal of study.

Senator Moss. Do you visualize some sort of a standardized type of operation that constitutes an inspection system? What I have in mind is a place you go into almost like getting a physical examination. They have all sorts of machines to test different parts of the vehicle as well as a visual inspection.

Do you think there ought to be developed sort of a generalized inspection technique that is a required minimum?

Mr. PITROFSKY. Yes, I do. I think that is feasible, this would be the most effective way of dealing with this problem.

Senator Moss. You support the attempts of S. 976 to promote information competition, and some critics of this legislation are skeptical about the bill's seeming reliance on this informational competition as the means of forcing the auto makers to tackle what you refer to as preventive engineering.

What aspects of the bill do you consider encourage information competition? Do you have any suggestions for strengthening this provision?

Mr. PITROFSKY. Let me say at the outset that informational competition is not going to solve all the problems, but I do think it is an important step in the right direction.

As I recall the bill, section 125 requires that the Secretary of the Department of Transportation conduct tests to develop information about the ability of cars to withstand low speed collisions without incurring enormous expense to the owner, and then 127 (a) and (b) require that the information be made available and disclosed to insurance companies and to consumers.

I believe these are steps in the right direction.

I do notice in the bill that there is some ambiguity as to whether there is going to be a requirement that this information be disclosed to consumers as opposed to a provision that it be there and available for consumers who ask for it. I think the bill should be drafted in such a way as to insure that consumers will have access to this information, and therefore should provide that the information must be given to consumers.

I also would hope that it would be made available in simple and plain language so that consumers will be in a position to make effective use of that data.

Senator Moss. Do you see consumers beginning to utilize the informational competition that exists now? Are they beginning to use this and relying on it?

Mr. PITOFSKY. Of course, the first thing to note is there is not a great deal of informational competition going on right now, so consumers don't have a great deal of relevant data, with respect to price, quality, and durability, which they can use to make their own sensible determination.

To the extent that there is such information, our experience at the FTC is that it definitely is used.

I might mention two areas by way of examples. One deals with the hearings that we have held on disclosure of octane ratings with respect to sale of gasoline, a rule that we have now promulgated, and the second has to do with hearings that have been held as to disclosure of care labeling directions for wearing apparel. Our hearings indicate in both those areas that that information is much desired by consumers and it is predictable that the information will be used.

I might also add that our record in the care labeling matter indicates that in Europe and Canada, where very substantial care labeling information is made available to consumers, they use it and they use it effectively.

Senator Moss. I am sure you are familiar with Ford talking about safety. Is Ford promoting informational competition in this?

Mr. PITOFSKY. I am sorry?

Senator Moss. The ad that comes on television talking about the safety features of Ford products. It is a pitch on safety features. I wonder if that is any kind of informational competition.

Mr. PITOFSKY. I am not familiar with that advertisement. It would depend whether it is image-oriented and vague puffing, on the one hand, as opposed to giving the consumer hard data, on the other. It is the latter that makes for effective informational competition.

Senator Moss. In your statement you referred to the study that the FTC is making an investigation of the automotive parts industry. Is there a time you have set when we might expect that report to be available?

Mr. PITOFSKY. That is a matter that is in the Bureau of Competition rather than my own Bureau, and I am afraid I don't have an estimate. I am sure I could obtain one and supply it to the committee. I am not sure where that project stands.

Senator Moss. I may be asking you although it is not directly in your department, but I was wondering if this investigation on automotive parts would cover the situation where the damaged part of the vehicle is, of course, made only by the manufacturer of that particular vehicle. If it is a Ford, it is a Ford fender or whatever. And I wonder how we might reach this so-called captive market that is thus provided to the manufacturer of the vehicle.

Do you have any suggestions on that?

Mr. PITOFSKY. No. Let me just say that the allegation that there is a kind of vertical integration or captive market is very much a part of this study. It is under review right now within the staff, and I have no suggestions or predictions as to what kind of proposal will come out of that study.

Senator Moss. Is the Commission study also looking into the complaints by consumers that the insurance industry is failing to get policyholders' cars promptly repaired following crashes?

Mr. PITOFKY. I am not aware of any study at the FTC along those lines.

Senator Moss. Does the artificial labor cost which the insurance industry alleges force them or is forced on them by repair shops contribute to the shortage of qualified repairmen?

Mr. PITOFKY. I don't think the Commission is looking into that question, and I really have not studied it sufficiently myself to have an opinion.

Senator Moss. Will this be part of that study on prices and costs of repairs?

Mr. PITOFKY. I am not certain of that.

Senator Moss. Will the preliminary injunction power help the FTC to better control automobile repair practices?

Mr. PITOFKY. Well, certainly the preliminary injunction power will allow the Commission across the board to be more effective in its consumer protection operations. I can imagine, for example, the preliminary injunction coming into play with respect to certain kinds of advertising exaggerations.

So far as repair practices are concerned, I can imagine a case in which a preliminary injunction would be in order, but to be candid about it, I don't believe that that is the central problem that we have to surmount in order to be effective in this area. I think on the contrary that the automobile repair problem is so pervasive, involves so many different business units, that it would be difficult for an agency like the Commission, operating on a case-by-case basis, to ever deal effectively with that problem.

It seems to me it would have to be solved either by rulemaking within the Commission or by legislation.

Senator Moss. When you say that S. 976 is a good initial step but we have to go further, what do you mean? Are you referring to your recommendations for establishing Government performance standards in automobiles, recommendations growing out of your warranty study?

Mr. PITOFKY. Yes, exactly, that is a matter that has been under very serious review in the FTC and I would hope that we will have something for this committee very shortly on that, perhaps within the next month.

Senator Moss. Thank you.

Our subcommittee chairman has joined us now. I am pleased that Senator Hart is here. I don't know whether he has any comments or questions.

Senator HART. Thank you, Mr. Chairman. I apologize. I was testifying before the chairman of the Commerce Committee in his role as chairman of an appropriations subcommittee.

Senator Moss. Very good.

Senator Baker?

Senator BAKER. Mr. Chairman, thank you very much.

I, too, apologize to the subcommittee and the witness for being late, but I have read his statement and I have one or two questions

that I would like to put, in order to clarify the testimony. You may have touched on these before I arrived. If so, I apologize in advance for being redundant.

In your statement, the first paragraph, you state that you are speaking as a member of the Commission's staff but not for the Commission.

I would appreciate it if you could tell me if this statement and the positions expressed in it have been submitted to the Commission or cleared by the Commission for these purposes today?

Mr. PITOFKY. No; most definitely not.

Senator BAKER. In your statement you point out that former Chairman Weinberger in testifying last year before this committee referred to restrictive practices and the elimination of competition at the manufacturing level as well as competition between independent body shops and franchised dealers.

Has the Commission investigation of the competition between independent body shops progressed to the point where you would indicate whether or not the legislation being considered by the committee would have any effect on the disparity of prices often encountered by the consumer seeking repairs? This was a point touched on in yesterday's question by Senator Griffin of Michigan.

Mr. PITOFKY. I had touched on that in one of my earlier answers. That particular study is in the Bureau of Competition rather than the Bureau of Consumer Protection with which I am involved, and I do not know the scope of the study. I don't know exactly what matters are being taken up in that study. Therefore, I am very hesitant to comment on whether it would deal or not deal with that problem.

Senator BAKER. I apologize for asking a question beyond the jurisdiction of your division, but, since it was mentioned in your statement, I thought you might be in a position to elaborate a little further.

Thank you, Mr. Chairman.

Senator Moss. Thank you very much, Mr. Pitofsky, Mr. Martin, and Mr. Needelman. We are glad to have you here for the committee and we appreciate very much your testimony.

Mr. PITOFKY. Thank you.

Senator Moss. Our next witness is going to be Mr. Paul H. Taylor of the Taylor Devices, Inc., from Buffalo, N. Y.

I understand he has in addition to a statement some illustrations that would be of interest to this committee.

We are pleased to have you, Mr. Taylor. Will you identify your associate?

**STATEMENT OF PAUL H. TAYLOR, PRESIDENT, TAYLOR DEVICES CORP. AND TAYCO DEVELOPMENTS, INC., NORTH TONAWANDA, N.Y.; ACCOMPANIED BY DOUGLAS P. TAYLOR, DIRECTOR, RESEARCH, TAYCO DEVELOPMENTS**

Mr. PAUL TAYLOR. Thank you for inviting us to testify.

This is my son Douglas, who worked with me in connection with this. He is director of research of our research corporation, Tayco Developments, which is heavily involved in this.

I am president of Tayco Developments and Taylor Devices which manufacture the products.

We are now working with every major manufacturer in the United States and five or six of the Japanese and European manufacturers.

At the moment I hold 46 patents in the United States and more abroad on aircraft, on machine tools, high-speed automated equipment and energy suppression systems, energy management systems.

As far as my own credentials go, I am a licensed aircraft mechanical engineer, a graduate aeronautical engineer, and was director of research for a Maine company making machine tools and automated equipment.

We are talking here today primarily in connection with energy absorbers as we known them. Among other things which Taylor Devices make, we make a series of very precisional shock absorbers for the Saturn 5, the F-111, and other types of aircraft.

We also make commercial units for heavy mining equipment. One of our main items of products concerns a crane buffer used in industrial steel mills. We also are approved for use on railroads as cushioners and material of this kind. Horizontal shock mitigation has been part of Taylor Devices and Taylor's work for almost 14 years.

We were called by Ford Motor and American Motors almost simultaneously to work with them on this energy management situation with regard to the energy bumper. We pioneered in this molecular compressibility field which includes using the space between molecules as an energy source.

The same material when shoved through an orifice with our fluid amplifier approach which we have pioneered provides almost a constant force shock absorber with a very few parts and at extremely low cost.

For your information, we have quoted Ford and others approximately \$2 a unit for the bumper shock absorber in volume production and are prepared in connection with a Toronto corporation to produce the cylinder parts in the joint operation in Toronto or in the Canadian side for U. S. manufacture.

Senator Moss. By \$2 a unit, would that be the whole front bumper or are there two or more of these shafts? Maybe I am premature.

Mr. PAUL TAYLOR. There is the \$2.80 LTD shock absorber. This particular unit which you see here has passed all specifications. The unit has taken the original specification put out by the DOT—the original specification as put out. We are the only one that took a 45-degree impact in the original specification and passed every single specification put out originally by the DOT.

Now, with the watering down of the spec that occurred under the DOT, this same unit to take the specification that the DOT amended it to, this will take a 5-mile-an-hour barrier crash into the unit and will cost approximately \$1.60 to produce.

Both units are qualified. The material has been submitted to every major manufacturer.

Senator Moss. Well, the estimate then that it will cost \$100 on every unit produced is a little high; isn't it?

Mr. PAUL TAYLOR. I would assume so from my experience in tooling and elsewhere.

In fairness to the automobile manufacturers, they are entering an area that they are not that familiar with where high-strength materials and other stuff must be used. The experimental car which we will

show to you we have been promoting with them the use of high-strength steels in the bumper which will not affect adversely the passenger car handling characteristic and at the same time provide the necessary cushioning to absorb the energy of the bumper.

Now, the actual unit that we are trying to promote now is a smaller unit to meet the new DOT specification. We have been into these people and of course with the watering down of the spec, there is a tendency to go to something cheaper and made in-house. This is typical of what could be expected. They are after a profit, naturally.

The material that we have been working with has very unusual characteristics, and there are two other devices that are proposed for this use that have the same characteristic. This is an almost constant force. We are the best of the bunch. We show a 98-percent efficiency in some cases and in some cases as much as 95.

Let's suppose the crush strength of a car frame is 10,000 pounds. This particular unit at 10,000 pounds that you have in your hand, Senator, actually is a 9,500-pound shock force unit, 3½ inches. That will cushion an LTD at 5 miles an hour into the barrier on each frame rail and at 45 degrees to the corner end, and has done so at Ford Motor.

Mr. DOUGLAS TAYLOR. Just one of those particular units applied to the Ford LTD would absorb the full energy under the present spec. Two of those units would add to that force level. If mounted onto the car, it will meet the earliest proposed DOT spec which included a 45-degree angular pendulum input or on rail inputs, inputs into the center of the bumper itself.

The unit to meet the DOT spec as it is presently written if it was to be used as you would normally with two units per bumper on the vehicle, is roughly about two-thirds the size of that one and uses around a 2½-inch stroke. This would be for the average-size-to-intermediate car.

Your light cars require an even smaller unit. Your much heavier cars in the luxury-car class would require a somewhat larger unit.

Mr. PAUL TAYLOR. Some idea of the force of that unit, so that you may get some standard to go by and understand that the automobile people look at the problem rather in a difficult sense, that is a standard Ford shock absorber. Our shock absorber is equal to 60 of the standard Ford shock absorbers in energy capacity.

Senator MOSS. It will absorb 60 times as much?

Mr. PAUL TAYLOR. You would have to have 60 of these shock absorbers to absorb the same energy as this one does as presently rated.

One of the problems is: this is new technology to these people and they are not moving as fast as I would like them to move, naturally; but the energy involved is tremendous taken into the frame.

Our opinion has been for a long time that this could be managed better than it was in the various fixtures and materials that we have. We have made up frame attachments, the bracket and attachments, and now, finally, the bumper, ourselves, to take this to these people and say, "Here, you can do this; it is within the technology; it is not as difficult as you think it is."

My son has in his hand a complete attachment taken to Ford which has been adapted to some extent. This is the frame bracket which attaches to the frame rail and this attaches to the bumper.

Mr. DOUGLAS TAYLOR. It is taken apart like so. This small device in here is the energy absorber. This section here bolts to the bumper of the vehicle, and this section here bolts to the frame of the car.

As to the cost, this is the total bracket assembly. This is a bolt end installation. It bolts right into your vehicle, in many cases without a modified frame on the vehicle. There is no stiffening required with many of the hydraulic energy absorbers that are on the market today.

As to cost, if we are willing to sell this unit in the under \$3 range, you can figure out pretty much for yourselves how much these small extruded aluminum brackets are going to cost.

Mr. PAUL TAYLOR. We don't think we even had in those original designs the best or the cheapest that could be done. Recently in desperation after hearing these comments on the cost, we proposed and built a car that is available here today for examination and on which we have movies and film clips of testing performed just last Friday when we decided we had to move. We said according to our calculations, an existing car right off the line ought to be able to take 10 miles an hour head-on into a barrier and 5 miles an hour in the back. That is four times the present DOT spec.

We have to remember the energy goes up by the square of the velocity. Therefore,  $2\frac{1}{2}$  miles an hour is only 25 percent of 5 miles an hour, and 5 miles an hour is only 25 percent of 10 miles an hour.

Now, in our early test just last Friday, we passed every single test, and we did do a 10-mile-an-hour impact. All tests were certified by an independent appraisal. No damage on the front at  $7\frac{1}{2}$  miles an hour and no damage on the back through 5 miles an hour.

Seven and a half miles an hour is double the present energy levels that it has been said they could meet. On the 10-mile-an-hour impact, we had been supplied an experimental car by the manufacturer to inhibit engine movement forward and that failed at 10 miles an hour.

Apparently, there was some consideration that they were supplying a 6-mile-an-hour unit. I guess they didn't know how fast we were going to hit the wall. There was minimal damage done to the car.

We have omitted it from the film clip since we have shown only items of zero damage.

Mr. DOUGLAS TAYLOR. Repair due to these experimental parts by the manufacturing failure was \$91.70. This compares quite favorably with the present figures which are readily available from the Insurance Institute, some of their writeups, which I believe is in the \$400-to-\$700 range from a permanent barrier impact of this velocity.

Senator MOSS. Just what kind of damage was it? Was it on the internal part?

Mr. DOUGLAS TAYLOR. No; this was the motor of the car, normally rubber, which isolates the mass of the engine from its own vibrations. Obviously, with the mass of a typical American car engine, well above 450 pounds in most cases, you have a tremendous amount of stored energy in the engine when the car hits the barrier. The engine is not rigidly connected to the frame, so those engine miles have to absorb the travel of the engine.

You can't take it on the rubber. So this particular manufacturer made especially, hopefully for a prototype 1973 engine mount, a couple of mounts with little steel buffers in them. So if you used up the travel in the rubber mounts in the collision, this little steel section would pick

up one of the steel components that are bolted onto the body of the car, the frame of the car, and it would absorb the energy.

As it was on this impact, he didn't have enough area on the steel mount and the engine mount came out and loosened up in the front, allowing the strength of the engine to contact the radiator.

Senator Moss. This is the engine sliding forward?

Mr. DOUGLAS TAYLOR. Yes. The manufacturer assured us that he can fix the mount readily enough at virtually no additional cost by adding a little bit more steel and it should be able to take it with no problem.

Problems like engine mounts vary between manufacturer and even between different cars of the same make due to the fact when they put the engine in the car, in order to not transmit any of the engine vibrations to the vehicle, different engines require different rubber mounts. Some require much softer mounts than others.

Mr. PAUL TAYLOR. Actually there was zero damage to the exterior of the car. It has been not touched since last Friday, and you gentleman can examine it yourselves.

There is an important thing we want to bring out here. We have contended since the public wants energy systems in their bumpers that they should make available a unit that would take the higher impacts as an accessory price, and we have designed our unit, the aluminum unit that you saw, to take 5-miles-an-hour impact using the jacking tool, the tool that you see, and at the manufacturer's option he may submit in there a steel unit which will take the same car at 10 miles an hour without any change whatsoever, just snap in place, and he has a 10-mile-an-hour system to be prepared for the 1975 cars.

Senator Moss. Would that increase the cost of the unit?

Mr. PAUL TAYLOR. That unit cost would probably go up about \$2.50 I would judge because the steel cannot be impact extruded in the extrusion process as yet. The processes are coming. It may be done very shortly, but at the moment it cannot be coat extruded of steel. It would have to be made out of tubing which is welded which will increase the cost a couple of dollars per unit.

In connection with this, I should like to say one thing. We have already had a car at Ford Motor, a safety car, that has used our units that will go to approximately 50 miles an hour with no problems. The units have been crashed into the wall two or three times at 50 miles an hour and were operable after the crash.

It works in conjunction with other safety elements that Ford has developed which I am not at liberty to disclose. The same units will take the car into the wall, that particular car with the stronger frame, into the wall at 27.8 miles per hour or car to car at 55 miles per hour with absolutely no damage.

This we have verified in our own independent test in our own laboratory. So, there doesn't seem to be in the present technology as we know it any limitation except that of cost. As you go up to the larger units, the cost increases in proportion to the size of the unit and that goes up by the square of the velocity.

So, for 50 miles an hour, the unit gets quite a bit more expensive. However, that same unit if it were adapted as part of the car frame and other things that could be done would not be near as costly.

The same structure could be used as car frame.

In connection with all this work that we have done, we have been quite concerned with certain trends that we see that we think need examination by Federal authorities in connection with this. Everyone has been looking at protection of the car and no one has been paying any attention to protection of the individual that is riding in the car.

In this particular instance the best type of shock absorber ever devised to protect the individual was the crushing front end. The shock absorber which does the same thing must do it not to increase the energy applied against the passenger so he becomes a ping pong ball being thrown around inside the car. Certain of the systems under consideration and documented in our talk are just this kind of a system.

One of them in particular being considered by a major manufacturer by his own admission gives back 25 percent of the energy of collision which can only go to one place, the passenger. The other one is even worse. It is a rigid system. A rigid system at  $2\frac{1}{2}$  miles an hour in our opinion may offer serious damage to a passenger—at as low as  $2\frac{1}{2}$  miles an hour.

In conjunction with this, my son has run instrumented tests on dummies in connection with the State University of New York at Buffalo which prove that this is a dangerous thing and requires much more study than the limited study we have made of it. I will let him take over from here and explain what he has done and what the significance of this event is.

MR. DOUGLAS TAYLOR. As you know, the DOT, of course, has given to us the S.S. No. 215, which requires that all 1973 vehicles be able to withstand a frontal barrier impact at 5 miles an hour, and a rear barrier impact of  $2\frac{1}{2}$  miles per hour, with zero damage to the Federal safety equipment.

Now, Federal safety equipment includes the lights, the horn, cooling system, fuel system. It doesn't include any of the sheetmetal parts, it doesn't include your hood, it doesn't include bumpers.

There are many ways to meet this spec. In fact, I would wager to say that a good many cars on the road today with crushable structures as they now have, will meet this spec. If you want to go with energy absorbing devices of some sort to meet the specifications that now stands, you can meet it in two ways.

One would be to make the car perfectly rigid. In other words, beef it up, beef your frame rails, beef your bumper, beef all the sections that have to take the impact force.

Now, any kind of input energy into a vehicle must be dissipated as an applied force over some amount of travel. In other words, you have to apply a force for a certain distance to absorb a certain amount of energy.

If you make a rigid system, you cut the travel down to a very, very small amount, and hence, the force which must be applied to the car and hence to the passenger, increases greatly.

If you make a rigid system, if you have your travel of that system go toward zero, the force which must be applied to the vehicle goes upward ad infinitum.

What it amounts to, right now what we did for some tests at the University of Buffalo, we took a simulated intermediate-size car with an effective mass weight of 3,400 pounds. Now, we mounted on this car two different types of energy-absorbing bumper systems. One was the tail, or liquid spring shock system.

In fact, we mounted a system that was basically designed for the intermediate-size car—Satellite, Coronet, cars in that range—mounted that on this car and ran it into a barrier.

Mounted in the car in a standard automobile bucket seat, wearing a lap belt, was an instrumented dummy with all the masses and resiliency specs that a human body duplicated.

Since we assume that for a collision of this nature, most of the damage which would occur would be in the form of a whiplash injury, such as you hear bandied about quite often, we mounted an accelerometer between the eyes of the dummy, ran it through a charge amplifier into a visual output on an oscilloscope screen and took pictures of it at the moment of impact.

We ran the car with a tail or liquid spring system, a system which on impact supplies basically a square wave of output, a constant force over about 2 inches of travel on this particular one, and it returns quite slowly, it comes back in 2 or 3 seconds.

A measure of how fast an energy-absorbing system returns is called the coefficient of restitution, which for a barrier crash is simply the velocity at which the car leaves the wall divided by the velocity at which it goes into the wall.

So far this system, with the very, very low return time from the liquid springs, the coefficient of restitution of this energy-absorbing system approached zero. We ran the car into the wall, we monitored a 5 G deceleration on the vehicle—this is at 5 miles per hour—5 G's on the vehicle, 5 G's on the passenger's head, but the maximum G's on the passenger's head did not occur as it went into the wall.

It occurred because the passenger stretched forward under the impact force basically because his mass was not rigidly affixed to the car. The passenger stretched forward, and as the units came to their full travel, an instance afterward, the seat belts acting as a spring, snapped the passenger back into his seat.

The total history of the passenger through the collision was about 3 G's going in and 5 G's rebound back into his seat.

We took the liquid springs out. We put in what would probably be the purist technical definition of the system with a coefficient of restitution of 1.0. We put in a battery of 18 automotive coil springs.

I might add that those of you who think that 18 automotive coil springs is a tremendously stiff bumper, it is only equal in energy capacity to one of these units and uses twice the stroke of this unit at any given energy input.

We took 18 automotive coil springs, mounted them on the bumper, smashed the car in the wall with the coil springs on them.

Again we recorded 5 G's on the car because we had picked the number of coil springs to give us equal G loadings with that impact.

Now the passenger again lagged the response of the car in his response. He was moving forward stretching his seat belt as the car was being stopped. As he came out, the instance where the passenger was farthest out in his swing forward, the coil springs began firing the car back. The passenger violently rebounded into his seat, in fact he rebounded into his seat with a series of impressions in the seat, bumps back and forth.

The G-loading history on that passenger showed 5 G's going in and 10 G's going out.

Now, 10 G's applied to a person's head—your head weighs 25 or 20 pounds—you are talking of a 25-pound force, which multiplied by 10, gives an equivalent of a 250-pound force on your head, shoving you back into that seat.

We feel pretty sure, after monitoring G loads of this nature, that with a system which has a high coefficient of restitution such as a spring system, basically the kind of system that many manufacturers are looking toward to meet this present Federal specification, that whereas damage claims for the vehicle itself may decrease, we feel this will be countered by a greater increase in liability claims due to the fact that people are going to be getting whiplash injuries rather than just costly crushing their fenders and such.

There are other types of spring systems on the market right now in addition to a steel-type spring. Some of the manufacturers are looking into rubber springs. This would be a solid chunk of rubber, which you either compress or you would sheer when you impact the wall.

Now, a rubber spring works better than steel springs in many respects, because it doesn't fire back quite as rapidly. But it only works well at ambient temperatures. You take a rubber spring down to  $-10^{\circ}$  and the rubber is virtually solid, and the applied force of the vehicle, instead of having 5 G's for a 5-mile-an-hour impact, you are talking of 15 to 20 G's.

When you get up to that range, the passenger won't have to worry about any whiplash, he is going to be suffering enough from the basic input to the wall.

The Federal spec does not bother to mention anything on what temperature this system has to work out, it doesn't go into what type of loadings the passenger has to withstand, it doesn't mention the type of G loads the car has to stand.

It is quite possible to meet the Federal spec in a way that will kill the passenger each and every time at a 10-mile-an-hour impact with no problem whatsoever.

The question is, what good would a specification be if it protects the vehicle at the expense of the most important component in that vehicle, namely the passenger.

Mr. PAUL TAYLOR. In connection with this, we feel that this requires a good deal of investigation quickly. The timing for getting these systems in production is around July of this year, and once committed, it is very hard to reverse sights.

There are adequate research facilities, independent ones around, to which the manufacturers should be required to submit cars that they think may pass these specifications, and determine the effect on the dummy or on the passenger.

We have to consider that cars are built not for astronauts, but primarily for little old men like me and young girls and pregnant women, and old ladies and old people who are subject to blackouts at much lower limits than an astronaut might be.

There are occasions when a person could not leave a burning vehicle from a 5-mile-per-hour crash, and there have been instances where gas tanks have left cars at 5-mile-per-hour collisions. It is a very serious matter and we recognize we won't make many friends with some of our statements here, but to me the preservation of human life is of first importance.

Certainly we don't want to go backward. If we are trying to improve things, we want to go forward.

Getting back to our technical aspects before our photographs go on, we have taken the liberty of taking one of the standard sections of a current bumper system which you see here, and doing the same thing in high-strength steel.

The crushing loads of these two elements—this is the bumper you will see on our Hornet that hit the wall at 10 miles an hour—the crushing loads of these two sections are roughly 10 to 1.

Doug, do you remember the numbers you ran on the test?

Mr. DOUGLAS TAYLOR. For the standard American Motors bumper, we put the bumper in a compression tester and crushed it. We plotted a curve for displacement.

The bumper started to crush after being displaced at 50-thousandths of 1 inch. At that point the force shown was 700 pounds.

The bumper section continued to crush at this 700-pound level for four-tenths of an inch of travel at which time it finally violently buckled and that was the end of the section.

We took a similar section made by our plant, and as you can see from comparing the two sections, the one which we made is virtually the same thickness as the standard American Motors bumper. The difference is that we have replaced the normal cheap low-carbon steel which Detroit has been using for years, and years, and years. We have replaced it with an alloy of stainless steel, which the aircraft industry has been using for years, and years, and years.

The difference in cost between a steel section, a steel bumper section beefed to withstand force levels equivalent to what that stainless steel bumper section would withstand in a low-weight configuration, is almost no cost differences.

That thin stainless bumper section took quarter inch displacement and moved up to a crush strength of 6,000 pounds.

It maintained that 6,000-pound force level for nearly a half inch of travel at which time it slowly and very gently buckled into the final shape that you see it in now.

So, you are talking of a difference of energy capacity, the energy that bumper could absorb of probably a factor of 20, in that range.

Mr. PAUL TAYLOR. Now, in fairness to the automobile people, they have just recently been exposed to these steels. We have taken them to them and they are building and experimenting with bumpers of them. After this last test which was witnessed by American Motors executives, they asked if we would immediately take this car to Detroit, our Hornet, which you will see on the photograph today, for their examination of the bumper.

One of the most costly points on the bumper system has been the attachment to the bumper itself. The bumper because of mismatch and override and underide and other things tends to twist off, and carrying that force from the bumper into the ice later is a very difficult thing. You have a 7-inch bumper and you are taking it into a 1¾-inch cylinder. This has been one of their major problems. So we elected only 2 weeks ago to build the bumper, first showed and built the bumper and put it on the car and, as you will see in the photograph, it has performed admirably.

They have asked us to deliver the car to them. It is a very simple bumper attachment, simpler than what they have been considering,

and possibly it will cause a reduction in their estimates that they are now putting out.

I think in fairness to the estimates, and I just digress here for a moment, when the figure was quoted, a substantial figure by Ford internally for putting our product in production, I blew my stack and from certain investigations there was a few fudge factors in it which a manufacturer always does. If you tell them they have to build this, they will say I need \$2,000 to do it. When you get down to analyzing it, you get down to \$300.

A lot of the figures that are quoted are first figures off the top of the head of the automobile men. But they are certainly not realistic in regard to final production I am certain.

Mr. DOUGLAS TAYLOR. I would imagine the emissions control people have about the same statement to make on that as we do.

Mr. PAUL TAYLOR. I think if we can see our movies we can probably show what it is possible to do to these components we exhibited here.

Mr. DOUGLAS TAYLOR. Before we go to the movies, the car you will be seeing in these films has not been modified structurally by any method whatsoever. We put the bumper system on in about 4 hours' worth of time. The rears was mounted by cutting a couple of holes into the channel section.

I might add the channel section is the same 30 to 40 thousandths thick material that everybody in Detroit has been using for years. The front end is bolted directly on the standard American Motors frame rail. The only modification of the vehicle whatsoever was the addition of some stronger motor mounts as I have already mentioned. They were experimental MC devices designed basically to meet the 1973 spec as it now stands.

Mr. PAUL TAYLOR. They weren't strong enough.

(Whereupon, a movie was shown.)

Mr. PAUL TAYLOR. I think that about concludes our testimony, gentlemen. We are ready for any questions with regard to it.

I believe there is a car somewhere downstairs trying to hit some wall. It has been a problem trying to determine where to hit the wall, to find someone's property that you could do this on.

Our liability insurance isn't very high.

Senator HART (presiding). Thank you, gentlemen.

I and a good many people in this hearing room have sat through a number of these films, this type of showing. A couple of years ago we saw the first films produced by Dr. Haddon, then we saw the updated version just a few weeks ago, and now we have seen yours.

The question just screams out for an answer: Why haven't we done vastly better in the Department of Transportation's standards; why the heck do I have a bill in here that says by 1975 they will have a 5 and 5?

Mr. DOUGLAS TAYLOR. Senator, if I may digress upon your statement a little bit, our company has sent in at least four rather violent comments contrary to the DOT specs when they were in the stage where you were free to comment on them. I know in addition to us, Dr. Ezra of the University of Denver has made some rather violent comments. I think I received one reply back from DOT telling me that they had referred my last comment to somebody, from which I

never heard any reply whatsoever. I have had no reply from the DOT on any of my comments.

They have been fully documented. I have given them all the data they have required. I have written on the spec part by part. When we did this test with the instrumented dummies, we contacted members of the auto companies and told them if they would send us samples of the energy absorbing devices they were playing around with in their labs, we would test them free of charge, and the auto companies declined.

I think until the Federal Government makes a spec which is rigid, that the auto companies are just going to meet the bare minimum. They will always meet the minimum. I have yet to see an auto company say that their cars produce only half the emissions that the Government requires.

Senator HART. Without getting into the admittedly tangled question of whether you achieve better performance by having minimum standards or by having simply a broad directive and having an agency fix standards, we will hear from the Department of Transportation before these hearings conclude this week, and I would anticipate that they will be prepared to answer the question which will be addressed to them. How come you set standards to be achieved by 1973 of 5 and 21½ when there is a fellow in Buffalo that shows live, in color, that it is in reach now?

Mr. DOUGLAS TAYLOR. I might also add there is a couple of fellows in California that have systems that work. In fact, offhand I can think of at least seven completely different types of energy absorbing systems, all of which will work, none of which are dangerous to the person or to the vehicle and all of which will offer not only zero damage to safety equipment but zero damage, period, to vehicles.

Mr. PAUL TAYLOR. Senator, if I may reiterate one thing that I have been pushing at the automobile companies very strongly. A vehicle is primarily a means of advance for human beings. If it doesn't protect the human being, it ought to go back to crushing the fenders, because that is a better system than some of the systems that are now being considered that will pass that DOT spec.

Senator HART. Everyone who sits around and says what we are trying to achieve, as I understand it, is to reduce the 50,000 Americans killed in automobile accidents, reduce the amount of property damage and personal injuries and reduce the property repair bill in a way that is compatible. I think that is what we have agreed to pursue.

Mr. PAUL TAYLOR. I am sure that is the intent.

Mr. DOUGLAS TAYLOR. The unfortunate thing is the Federal spec as it is now worded really doesn't decrease property damage at all. I am sure there are many people in the room right now that can recall an accident with their car where they ended up with a \$400 bill for sheet metal, but the horn worked, the radiator stayed good, and the fuel tank stayed in the car.

What is the purpose of the spec if they require equipment to be salvaged after the crash which usually isn't damaged?

Senator HART. That is still another chapter. But the more critical thing I think and one that we ought not to be diverted from is the need to get a solid answer to the question whether it will be possible in the next model car to have a bumper which reduces substantially the

damage to the occupant and substantially eliminates the damage to the property. Unless my eyes deceive me, I just saw one.

Mr. DOUGLAS TAYLOR. That bumper system we quoted to all the auto companies, and we are offering I believe a 3-month leadtime, 3 months after receipt of order for first delivery.

Mr. PAUL TAYLOR. With the aluminum extrusion process, the capacity is already at hand to turn it out.

Senator HART. The cost figures you have given them?

Mr. PAUL TAYLOR. They were quoted these figures in an official quote.

Senator HART. Let me make clear, I have never been a purist on the question of cost benefit. When the auto safety bill went through here, I took the position that the requirements that should be fixed by the Department should be feasible ones, and I make no apology for that. Hardly anyone can plead innocent of having used dollar savings to avoid some safety protection. I don't know anybody who puts his family in a home that couldn't be a safer home if he wanted to buy everything that would make it safe. But we don't. And we ought not to point fingers at others for raising this question. But having said that, if you can put that business on for \$2 or \$3 and achieve the life-protecting and property-protecting results, if in fact this can be done in the range of the figures you are quoting, it could be done *nunc pro tunc* assuming—let me ask, you have no idea as to how many lives will be saved, how many injuries?

Mr. PAUL TAYLOR. I wanted to get to that, Senator. I think we need to correct a misconception there. The crushing fenders that you have had have been an excellent shock absorber. The result is when you check the "G" loadings on our device against the crushing fender, they are almost identical. They can be made much lower on our device, but then the bumper must stick out from the car further, because for the lower the force you must lengthen the stroke.

So to protect the passenger at 10 miles an hour to the equivalent of  $2\frac{1}{2}$  miles per hour, I would say you need a 9-inch stroke device. They can be designed at some future time into the car, where the whole front end of the car will move in. With proper design, if you can limit the stylist—the engineers that these people have are excellent, and if they can be made preeminent so that they design the vehicle to do the shock absorbing that needs to be done, the 9-inch stroke which would protect passengers can also be incorporated. That would add cost however.

Mr. DOUGLAS TAYLOR. I would like to comment on that, too, I believe. When we first got into this entire project of the bumper shocks, and as we stated before the auto people came to us, we were told by the people that they would accept a  $3\frac{1}{2}$ -inch system, and that was it—that we would have to make what we could within a  $3\frac{1}{2}$ -inch travel. They said they could hide that and no one would notice they had an energy-absorbing bumper on them. We have yet to find a vehicle with which we could not meet the 5-and-5 capability with the  $3\frac{1}{2}$ -inch travel without crushing the frame. We can do it with unbeamed frames. If you want to go 10 and 10, something like that, you are going to require somewhat beamed frames. We usually set our units to the crash strength of the frame. Whatever the manufacturer quotes us, that will be the maximum force.

Mr. PAUL TAYLOR. May I add just one thing that may help us on reducing damage claims? The 10-and-10-mile-an-hour system which

you saw demonstrated, which has gone to 10 but there was some modification required, is a safer unit at 5 miles an hour than our 5-mile-an-hour system, because the stroke is 5 inches instead of  $3\frac{1}{2}$ .

So it would be safer to require a 10-mile-an-hour unit and have some limitations on it, and you have got a safer system at 5. At least the customer should have the option to buy these things if they are interchangeable.

Mr. DOUGLAS TAYLOR. There are systems which we are working on at the present time which normally, when the driver is driving the car, do not stick out at all from the vehicle. We have had a process which we have been using for military work for years now, since 1955, by which we can actually cause a liquid spring to be caught in the vehicle permanently, which, whenever an impact takes place, by means of—it is three or four very simple firing mechanisms—this spring system can be caused to extend in time to absorb the full energy of the impact.

We have sold systems like this to the military. The last one was to Goodyear Tire & Rubber, and it was a perfectly good, fail-safe device, has been around for years, and it is being evaluated by the auto companies.

Senator HART. What bothers me after seeing your pictures and hearing your comments is—I guess it is frustration.

If we think we are doing well to establish an authority in the Department of Transportation to fix initially safety related standards and our bill proposes property loss reduction standards, and there is a great hue and cry we shouldn't do that; we finally get over that and now the question is how we can do it, then the danger is we will assume that if the schedule is fixed with respect to the safety feature and if we get the bill through with respect to property damage, then progress is being made that is significant and the assumption would be that it is progress that would not be made absent the legislative/executive leverage; yet, if that is the way we proceed at the pace that we are going, the dramatic improvement that you describe as available will apparently never turn up.

Mr. PAUL TAYLOR. True; overcoming the inertiability in industry is a very difficult job. Nobody beats a path to your door. In this case Ford came to us, but you have to understand that we demonstrated cars to them  $4\frac{1}{2}$  years ago with a liquid spring system that would maintain the bumpers and they bought this, and those liquid spring systems were the ones that brought them to us the second time.

They are progressive people, these organizations, and then there are those who drag their feet—in my organization, too—and it is difficult to get the inertia going and sometimes it takes a push from above. I am going to get shot for that one.

Senator HART. That last model that you showed, that 5 and 10 miles against the barrier, that same model in the Insurance Institute films showed a front-end repair damage bill for a 5-mile hit as \$204 and at a 10-mile front-end hit of \$508.

Now, what damage repair cost was involved in your 10- and 5-mile-an-hour hits?

Mr. PAUL TAYLOR. It was approximately \$90. It cut a hole in the radiator. There was none at  $7\frac{1}{2}$ , none whatsoever.

American Motors is making some new motor mounts for us which will overcome that damage.

Due to the fact we wanted to present to the public a completely unmodified—unmodified by ourselves with respect to the basic mechanical components, we did not race the engine. We went on what AMC told us was a 1973 engine mount.

Senator HART. What was shown for the Haddon film was a repair bill equivalent to \$508. What you have shown is a repair bill of \$90, which itself can be reduced.

Mr. PAUL TAYLOR. Which shouldn't be there at all. It will be down to zero dollars.

Senator HART. What about the repair damage bill for your 5-mile an-hour hit?

Mr. PAUL TAYLOR. There was none.

Senator HART. As compared to a \$204 front-end repair bill and a \$104 rear-end repair bill of the same model.

Mr. PAUL TAYLOR. May I make a correction, sir. That was the same model, but I don't test lightly. That was loaded for bear. The station wagon is approximately 300 or 400 pounds heavier than the car that you were talking about. The station wagon is a heavier model. I picked the heaviest model on that car to demonstrate that even the heaviest could be protected.

So, that is really a more serious test than what you thought.

Also, the test was run with the engine running into the wall. In all tests presently run at Detroit that I have observed, the car is pushed into the wall. Now, on our normal testing—

Senator HART. Now, wait a minute, on the Haddon film—

Mr. PAUL TAYLOR. Yes, they were, but on the ones currently to pass the spec, the car is pushed into the wall. On our tests on crane buffers, for instance, we have to add about 15 to 20 percent more energy for the driving energy carrying it into the wall.

These are much more severe than what you are going to get even at 5 miles per hour on what the manufacturer is going to supply. They push them into the wall or tow them into the wall.

Senator HART. The comparison I made, I think, is a fair one.

Mr. Sutcliffe?

Mr. SUTCLIFFE. Mr. Taylor, in order to have a very clear record as to your cost estimate and so forth, let me go over some rather specific questions.

You have testified that you have submitted a bid to Ford Motor Co. for your attenuation devices.

Mr. PAUL TAYLOR. Right.

Mr. SUTCLIFFE. Could you please provide the committee with those figures as to what the bid was?

Mr. PAUL TAYLOR. They are included in the back of the committee's report that we submitted to them. There is a general impact extrusion quote. We are teamed up with them on a joint corporate effort.

Mr. SUTCLIFFE. For  $4\frac{1}{2}$  million a year it would be \$2.88 with the Teflon seal?

Mr. PAUL TAYLOR. That is this one.

Mr. SUTCLIFFE. And for the nylon seal it would be \$2.58.

Mr. PAUL TAYLOR. Right.

Mr. SUTCLIFFE. That is a firm bid from what corporation?

Mr. PAUL TAYLOR. General Joint Impact Extrusion of Toronto and Taylor Devices.

Mr. SUTCLIFFE. How many of these devices would be required per vehicle for 5-mile-per-hour front- and rear-end impact?

Mr. PAUL TAYLOR. The 1973 spec would require four of these.

Mr. SUTCLIFFE. So that we multiply four times that price figure for the impact device?

Mr. PAUL TAYLOR. Right.

Mr. SUTCLIFFE. Which automaker was that quote submitted to?

Mr. PAUL TAYLOR. Everyone except General Motors. We are dealing late with General Motors. We have orders and are working with them now, but there was a delay on our part because some patents were on file and our patent clause required a delay.

Mr. SUTCLIFFE. And the barrier impact capability of those devices is at 5 miles per hour for those cars?

Mr. DOUGLAS TAYLOR. Those devices are at about 7-mile-an-hour barrier. Those devices were done to the earliest Federal spec, the spec which really should never have been changed.

But that device is actually too large for the present spec by a pretty good factor. I imagine those prices for the minimal DOT spec for 1973 would probably see a price reduction of, oh, 10 or 15 percent.

Mr. SUTCLIFFE. As to the bumper itself, the metal that would be suspended between those devices, could existing bumpers be used?

Mr. PAUL TAYLOR. No.

Mr. SUTCLIFFE. If not, would substitute bumpers necessarily cost more than the existing bumpers to produce?

Mr. PAUL TAYLOR. They would cost more but not by that much of a factor. First, you forget the chrome plate and make it out of stainless steel, and use a high-strength alloy that would carry the loads.

Mr. SUTCLIFFE. Do you have any estimate as to the increment per unit for an average bumper?

Mr. PAUL TAYLOR. Well, to give you some idea how difficult that is at the moment, the steel in question sells if I buy it for aerospace use at about \$1.90 per pound. I have from the manufacturer's words that it would sell for 70, 80, or 90 cents a pound, in that range. They have not given us a firm price.

If it got down to the 70-, 80-, or 90-cent range, then you are talking about a 10-mile-an-hour capability, and I would assume the bumper probably would be in the neighborhood of two times the cost of the present bumper, and I don't have this exact costs, so I can't tell. That would be a measure of figuring it.

Mr. DOUGLAS TAYLOR. I would like to add something to that. For a five and five specification, if you put a decent set of bumper guards on the car, you will meet the 1973 Federal spec with zero damage to anything from barrier collision.

The high-strength bumpers are required only when you put the pendulum inputs into the car. If you are just talking barrier impacts, a good set of bumper guards, the bumper guards only pick up the barrier, you can use standard bumpers.

Mr. SUTCLIFFE. How much would the brackets cost that the shocks are attached to and then are in turn attached to the frame rings?

Mr. PAUL TAYLOR. I would say a safe guess would be double the cost of the units. Again this is for the old specification. You would be talking of \$25 for the whole assembly. You would have to double the price of the unit to include the brackets. I can tell you I think that is a little high. I didn't design all the tools, though.

Mr. SUTCLIFFE. So, you are talking about \$25 a car plus what might be required to beef up the metal between the units?

Mr. PAUL TAYLOR. Yes.

Mr. SUTCLIFFE. And you have said that the labor charge—you did in 4 hours?

Mr. DOUGLAS TAYLOR. I did it by hand. I would imagine the labor charge is as long as it takes the guy in the line to put in about six or seven bolts per unit, and I don't think that is unusually long.

Mr. PAUL TAYLOR. I would say it could be spot-welded along with the other spot-welding operations. I don't think it is an additional cost. Attaching the bumper is no different from attaching the present bumper so far as the labor cost.

Mr. SUTCLIFFE. So your best guess is \$25 for those things you know about, plus the possible additional cost to meet impacts other than a barrier crash by strengthening the bar that is suspended between the two devices that you would have on both ends of the car?

Mr. PAUL TAYLOR. I would strengthen the bumper enough to do the whole job. Every time you start putting pieces together, it costs money.

Mr. SUTCLIFFE. Now, you have testified that the Department of Transportation was aware of your technology prior to the promulgation of the standard?

Mr. PAUL TAYLOR. Yes.

Mr. SUTCLIFFE. You mentioned safety car work. Is this an experimental safety vehicle?

Mr. PAUL TAYLOR. Yes. We have talked to several of them.

Mr. SUTCLIFFE. What manufacturer was that?

Mr. PAUL TAYLOR. It is Ford.

Mr. SUTCLIFFE. Ford Motor Co.?

Mr. PAUL TAYLOR. Yes.

Mr. SUTCLIFFE. Are they participating?

Mr. PAUL TAYLOR. No, they are not participating. They are working on their own various safety aspects.

Mr. SUTCLIFFE. Senator, those are all the questions I have.

Senator HART. Gentlemen, thank you.

I repeat the impression that I am sure is shared by all who have been following these hearings, your testimony would suggest that dramatic advances can be made with existing technology, both to reduce injuries and death and property damage resulting from automotive vehicle use.

Without getting into any theological arguments about whose duty primarily it is to reduce death and injury, we resolve that question by the old bromide that it is everybody's, but some have to make steps earlier than others.

We are going to ask the Department of Transportation how come, given what you have told us today. They are suggesting that we wait until 1973 to do less.

Mr. PAUL TAYLOR. Thank you for having us.

Our car you saw in the movie is out at First and C Streets.

Mr. SUTCLIFFE. Mr. Taylor, if you will excuse me, the Senator would like to observe that procedure, and if you could wait until after the next witness has completed his testimony, then we could recess the hearing until 2 and see the demonstration.

Senator HART. Our next witness is a consultant in biotechnology and product design from California, Mr. Byron Bloch.

**STATEMENT OF BYRON BLOCH, CONSULTANT IN BIOTECHNOLOGY  
AND PRODUCT DESIGN, LOS ANGELES, CALIF.**

Mr. BLOCH. Senator, I would like to first express my appreciation for the opportunity to testify here today to present information on another safety bumper system, including a demonstration videotape showing the effectiveness of this safety bumper system which exceeds the proposed standards by the National Highway Traffic Safety Administration and those included within the proposed legislation, which is the subject matter of this hearing.

The safety bumper system that I am referring to is known as the INCA safety bumper system, and has been in development over approximately the past 6 years. From its original concept, there has been both test and feasibility hardware development, as well as pre-production hardware development which will soon lead to mass production manufacture.

In the interest of conserving time, I would like to skip the overview being read to the committee at this time and would like to instead herewith submit it in written form for inclusion as part of my testimony.

Senator HART. The testimony will be printed in full in the record.

Mr. BLOCH. I would like to point out that this INCA safety bumper system has been personally crash tested by myself, in a sequence of multiple impacts into a concrete barrier, in the Los Angeles area. These tests were in a 1971 Dodge Challenger equipped with the INCA safety bumper system—for the front of the vehicle—and I was wearing the standard lap-type safety belt. In addition, I have witnessed many other similar barrier impacts that have clearly demonstrated the merits of the INCA system; no visible damage to the vehicle, the reduction of deceleration loads to the vehicle occupants, and the automatic resetting of the system to enable repetitive impacts.

The barrier collisions were at speeds in excess of 5 miles per hour.

My original intention was to utilize the 1971 Dodge Challenger in producing the videotape to show to you. However, and as the previous witness also pointed out had occurred in his own tests, there was displacement of the engine and other components of the 1971 Dodge Challenger and in approximately 1 week's time, service garages were unable to make satisfactory repairs.

There were still problems of the transmission erratically shifting on its own volition, the muffler of the exhaust system had come forward so that it was essentially jammed against the right rear shock absorber, and there were other problems with other vehicle components as well.

So in the best interest of having an operable vehicle for the videotaping of barrier crash tests for this committee to observe, we changed from a 1971 Dodge Challenger to a 1967 Ford Mustang which, as some of the members of the automotive press know, has not been one of my favorite automobiles because of other reasons, including its front suspension design.

At this point, I would like to show the videotape and again in the interest of conserving time, I will show only that portion of the videotape which shows a series of barrier collision demonstrations of the INCA safety bumper system in action.

I appreciate the committee's acceptance of the text submitted here, plus additional information including reference to the relevant U.S. Patent 3,313,567 as a further description of the merits and components of the concept, system, and its embodiments.

Senator HART. We would like to see the videotape.

(Whereupon, a videotape was shown.)

Mr. BLOCH. Also, I have with me a letter that I would like to submit for the record, which states as follows:

On May 9, 1971, the undersigned conducted a series of barrier crash tests of the INCA bumper. The vehicle used was a 1967 Mustang. The tests were conducted by driving the vehicle into a solid concrete wall at approximately 5 miles per hour. The test was supervised by George C. Roberts, chairman of the INCA Corp. Videotaping and camera was accommodated by Harlan Bloch.

Incidentally, Harlan Bloch is a relative of mine, a cousin, and also he is the father of the two young ladies, Liza and Paula, whom you just saw in some of the barrier crash demonstrations, showing that one need not be either a professional driver or an astronaut in order to demonstrate the effectiveness of this safety bumper system in action.

The letter is signed by Mr. George Roberts and Mr. Harlan Bloch. I would like to submit this letter for the record, along with the photographic synopsis of what the committee has just witnessed on the videotape TV monitor.

Senator HART. It will be received.

Mr. BLOCH. Essentially, as the demonstration showed and as Mr. Roberts who provided the narration at the end of the videotape stated, the heart of the system is a purely mechanical energy-absorbing unit which consists of special belleville spring-washers which are arranged strategically within a strong, heat-dissipating cylinder. These spring-washers are essentially like pie plates, to make an analogy, in that they are slightly dished. Then by strategically stacking these components in series, some concave, some convex, it is possible to control the amount of energy absorbed at different velocities by different masses, as the vehicle impacts into barriers or other vehicles. Further, there is very minimal rebound, and the system will automatically reset itself and thereby be ready to absorb additional and repetitive impacts.

So, that is essentially the heart of the system.

The hardware assembly that you saw protruding from the front of the vehicle is for both demonstration and test purposes, as well as being able to adequately serve as an effective add-on system for many vehicles presently on the highways. The hardware can also be modified to approximate what is more akin to a normal-appearing bumper, as evolutionary developments that we are currently designing and developing, for both new and already-produced vehicles.

The safety bumper systems have concerned themselves, and correctly so, with minimizing property damage to the vehicle, and also with concern for reducing the deceleration forces to the human occupants of the vehicle.

A third category that I believe is also of merit and should be included in both the Department of Transportation motor vehicle safety standards as well as within the context of your bill, would also include minimization of injury to pedestrians in such pedestrian impact situations as might occur.

I would think the three basic categories would be: Reduction of crash damage to the vehicle, reduction of deceleration loadings upon the human occupants, and reduction of pedestrian impact injury forces that might be generated when such a vehicle were to impact into a pedestrian.

Senator HART. Yesterday Mr. Nader said that a rule has been proposed—it has been pending since 1967—with respect to exterior protrusions as threats to pedestrians; that even as of now the rule has not been promulgated. So, we will inquire of the Department the reasons for delaying that application.

Mr. BLOCH. Yes, there is correlation with safety bumper systems. I might also point out, and in the interest of time I would keep this very brief, that in my own professional activities, I occasionally serve as what the courts call an expert witness. It is not an ego-related term. It is a legally recognized term.

As such, I have testified in court, having analyzed various automobile accidents both for the plaintiff and initially years ago for the defense. In these efforts, I have assisted in the taking of depositions of members of the automobile industry, and have been dismayed and in some cases shocked at the lack of concern for a vehicle's frontal protrusions impacting into humans that may be struck crossing a street, for example.

I would like to cite this as only one of many examples in disputing some of the statements made yesterday that the auto companies do all they can to maximize safety. To use their own example of the Continental Mark III, I would like to very strongly point out the lethality of the front fender and bumper edges and protrusions of the Continental Mark III which Ford Motor Company testified yesterday was the kind of example to show that they are concerned with maximizing safety.

Also, to point out further evidence of the auto industry's tragic disregard for many safety aspects that should be taken into account in vehicle design, I would point to the "earmuff" roof designs and the "fast-back" roof designs that cause visual blind spots by reducing the effective rearward and rear-quadrant visibility, which thereby hampers backing into a parking space and lateral lane-changing on a street or highway, and thereby relates to potential collisions and resultant vehicle damage, which is of concern to this hearing.

So, by having these "blind spots" as typified by the Continental Mark III "ear muff" roof design and also by the Mustang "fast-back" roof design (which probably is one of the smallest effective rear windows of any Ford Motor Co. product in the past 10 years), I think we should also be concerned at these hearings with trying to reduce the insidious accumulation of vehicle property damage that can occur when the driver's visibility is reduced by unsafe roof designs and the inability to perceive the four corners of his vehicle, especially the two rear corners when backing up, in parking, or in lane-changing maneuvers.

There was a time, not too long ago, when the auto manufacturers proudly advertised the high degree of visibility that the driver had in their particular brand of car, including the driver's ability to see all four fender tips. Whatever happened to that safe and sane design criterion?

Since we are talking about occupant protection, I think it is very ironic, Senator, that the automobile industry, including auto safety specialists such as myself, have known for many, many years that stronger seats in our vehicles, coupled with built-in, inertia-reel retractable shoulder belts and lap belts, would be more effective—and would be much more inclined to be used by the general public—versus the present-day situation in which the lap and upper-torso safety belts are tacked into the car in an inconvenient, hard-to-use, uncomfortable, and shoddy manner.

So, I think it is rather ironic in the example that Ford Motor Co. mentioned, the Mark III Continental, which has no excuse for cutting costs for any safety equipment. Yet, the inertia-reel retractable belts which are used in military aircraft, in some commercial aircraft, in some race cars, and has been urged upon the auto industry by the various manufacturers of such equipment as well as by the auto safety community, has been callously disregarded being included.

Since one of the intents of the safety bumper systems would also be to minimize occupant injury, then improved safety restraint systems would help in that regard. I would hope the auto industry could greatly encourage the use of belts and harnesses if they were to include the inertia-reel retractable belt and harness systems and the stronger seats which are much more inclined therefore to be utilized by the occupants.

There are also other safety restraint systems, such as the so-called **airbag** automatic restraint system, that are worthy of diligent efforts to further develop and refine them as practical and effective systems for integration within all cars as standard equipment.

My own experience, by the way, includes the design and development and fabrication of the new and unique "Bio-Medical Automobile," which is essentially a mobile "mini-hospital" built within an automobile, to provide medical and health-care diagnostic, therapeutic, and emergency resuscitation services into and throughout the communities of America.

In addition, I've served as the research editor of *Road Test* magazine, as a professional avocation, in order to learn about and write about matters of auto safety, pollution reduction, design, value, and other consumer-interest aspects of the automobile.

I've also served as a consultant to help develop and upgrade the Kinematic safety seat system for automobiles, because I believe, as I still do, that such a system offers great promise for reducing occupant injuries in frontal-impact collision situations. Integrated within a comprehensive safety seat system and safety vehicle interior, and possibly cojoined with a compatible airbag restraint system, the Kinematic safety seat system is worthy of continued positive efforts by the auto industry and auto safety community.

I've mentioned these various aspects of my background to help indicate an experienced comprehension of the need for and merits of an effective safety bumper system—not as an island unto itself, but rather as a vital aspect of developing truly safe automobiles in a humane and comprehensive and realistic manner.

Senator HART. I am glad you made the comment you did with respect to the fact that this is an experimental example that you are showing and that the protrusion could be modified if it went into

production, because that was the first thing that struck me when I looked at it.

I thought, my God, we will be picking up pedestrians as we turn the corner.

**Mr. BLOCH.** Though the present bumper design will be modified in subsequent versions to also optimize that goal, the present hardware is nonetheless highly effective in reducing collision damage to the vehicle, as well as reducing deceleration effects on the occupants, which are two of the basic performance goals of any safety bumper system. Thus, the INCA safety bumper system is both effective and practical today . . . and can be readily installed on new and used cars today. Obviously, however, our continuous product development efforts will lead to various refinements and improvements in the evolution of the system and its components.

The heart of the system, and the point that should be focused upon, is the proven effectiveness of the energy-absorbing unit of the INCA safety bumper system. Because of the merits of such an energy-absorbing unit, the resultant safety bumper system is capable of absorbing and dissipating high-energy impacts, is itself of small size and mass and low in cost, has the desired minimal rebound after impact, and automatically resets itself after each collision impact.

**Senator HART.** I will ask why you estimate a consumer cost in the \$200 to \$250 range for a typical auto installation where the earlier witness described an absorption system that came for less than \$25.

**Mr. BLOCH.** In answer to that question, I would just like to add a brief preface.

When this INCA safety bumper system was called to my attention about 2 months ago, there were certain tasks that had to be assigned to the various handful of people that comprise the organization, with myself serving initially as a consultant and now as systems safety director to the INCA Manufacturing Corp., of Los Angeles.

The manufacturing costing was not one of the tasks assigned to myself, and so today I can best respectfully offer the information that is part of the documents that were submitted in quantity to your committee, plus another technical information document that has the part-by-part breakdown of processes and materials and costs.

In analyzing the part-by-part breakdown of costs, however, it would be of interest for the committee to know that this was in reference to very, very low volume—nowhere near the  $4\frac{1}{2}$  million units that have been discussed with previous witnesses, such as those from the auto manufacturing corporations. We were talking about only 5,000 and 10,000 units, and quantities of that sort.

Also, the component costs did not include amortization across such multiple units. The tooling costs per unit were also necessarily much higher than they would be in extremely high-quantity production of millions of units.

Thus, conditioned by these various facts and assumptions, my own estimate is that the energy-absorbing units could be mass produced in the multimillion category for under \$5 per each energy-absorbing unit. Therefore, a total vehicle that would have four energy-absorbing units would include approximately \$20 just for the four energy-absorbing units.

The related hardware that would protrude out from the energy-absorber units would then depend upon the particular design of the bumper, modifications to the vehicle structure, shock attenuation of various other components, and total integration within the overall engineering, esthetics, and manufacturability of the vehicles in high-volume production. I would estimate a manufacturing cost in the \$25 range for the energy-absorbers and related fittings, in multimillion production volumes for new vehicles. For low-volume installations on existing cars, inclusive of new bumper assemblies and installation costs, the cost to a consumer for a total system, front and rear, would necessarily and fairly be in the \$200 range.

Senator HART. Mr. Sutcliffe?

Mr. SUTCLIFFE. I have no questions. Thank you very much for your very interesting testimony.

Senator HART. Thank you again.

(The letter referred to earlier:)

INCA INDUSTRIES,  
Century City, Calif.

#### INCA SAFETY BUMPER TEST

On 9 May, 1971 the undersigned conducted series of barrier crash tests of the INCA bumper. The vehicle used was a 1967 Mustang. The tests were conducted by driving the vehicle into a solid concrete wall at approximately 5 mph. The test was supervised by George C. Roberts, Chairman of the INCA Corporation. Video taping and camera was accommodated by Harlan Bloch.

GEORGE C. ROBERTS.  
HARLAN BLOCH.

#### THE INCA SAFETY BUMPER SYSTEM

##### OVERVIEW

In automobile accidents, the collision forces that are generated often injure or kill the human occupants and damage the vehicle(s) involved.

The yearly toll of such tragic accidents now exceeds 55,000 fatalities. In addition more than four million total injuries are experienced, hundreds of thousands of which are crippling. The cost of this carnage exceeds an estimated six billion dollars annually in collision repair damage. The combined costs for personal injury, medical expenses, lost earnings, property damage, vehicle collision repair, insurance compensation, and related costs add up to tens of billions of dollars annually.

Most of the fatalities, injuries, and much of the vehicle damage can be attributed to automobile designs that are not "crashworthy". That is they do not absorb and dissipate collision impact energies in an acceptable manner as to preclude or minimize occupant injury and vehicle damage.

As frequently noted in Congressional hearings, including those on "Traffic Safety", "Motor Vehicle Safety Standards", "Prices of Motor Vehicle Safety Equipment", and "Automotive Repair Industry", the development of a safety bumper system is always referenced as an urgent and necessary requirement.

In recognition of this significant need for safety bumper systems, the National Highway Traffic Safety Administration (NHTSA) has recently announced a Federal Motor Vehicle Safety Standard applicable to new cars beginning with the 1973 models. The initial "Bumper Standard" specifies a nominal performance requirement for a 5 m.p.h. barrier crash test for front bumpers and a 2.5 m.p.h. test for rear bumpers.

The Standard's criteria for specific minimal damage to the vehicle's safety related equipment will provide a prime measure of the bumper systems performance and protective ability.

While the NHTSA intent is commendable, many critics have chastised the Bumper Standard as "too weak" and have urged raising the crash test criteria from the initial 5 m.p.h. level to a more meaningful fifteen or twenty miles per hour which better approximates the realities experienced in auto accidents. Another weakness of the Bumper Standard is that it is applicable only to new

cars (beginning with the 1973 models) thereby eliminating any standard for similar margins of safety protection for the approximate ninety million passengers cars presently on our highways.

As cited in the aforementioned Congressional Hearings analysis of all impact speeds in auto accidents, it was concluded that the average speed of frontal and rear collisions at the onset or instant of impact was a low sixteen miles per hour.

Because energy absorbing devices have been developed and are available to accommodate all safety criteria, there is no foreseeable reason why these products cannot be readily accepted for use in motor vehicles. Safety Bumper Systems must be efficient, economical and capable of being installed as a retrofit to existing and new vehicles.

#### SYSTEM DESCRIPTION

The INCA Safety Bumper System is a patented and barrier-crash tested energy-absorbing safety bumper system for automobiles and other motor vehicles.

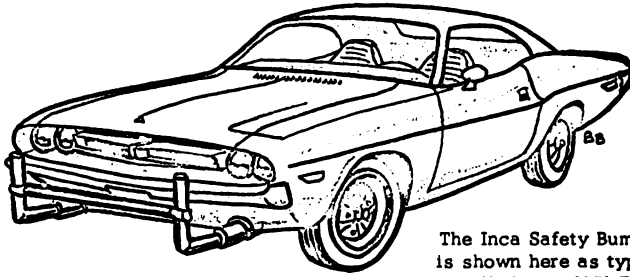
The basic function of the bumper is to absorb and dissipate the energies generated during collision impact, thus eliminating or minimizing damage to the vehicle and injuries to the occupants.

The "heart" of the system is a purely mechanical energy-absorbing unit composed of belleville spring-washer components strategically stacked within a strong, heat-dissipating cylinder. Two of these energy-absorbing actuators are rigidly mounted by adaptor brackets to the front stub-frame or frame of the vehicle. Projecting forward from each of the two actuators is a rigid tube which serves as a "piston" within each actuator. These tubes also serve as structural members to transfer forces from the "bumper bar" which is mounted outward and parallel to the vehicle bumper.

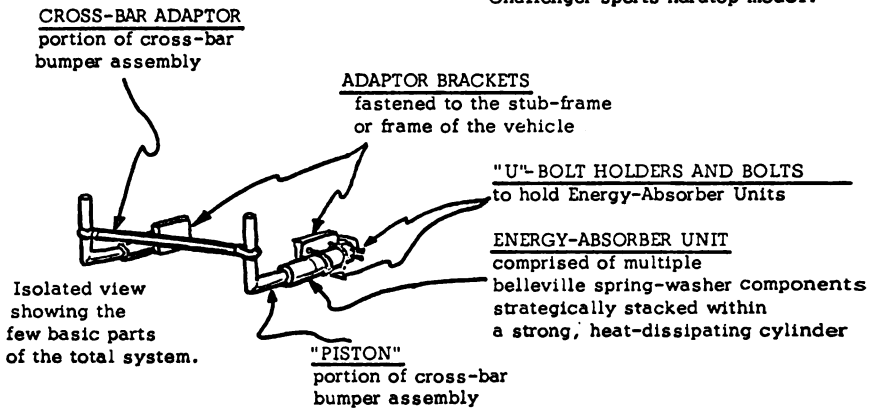
When a collision impact occurs, the "bumper bar" is moved toward the vehicle body causing the "pistons" to move into the energy-absorbing units. The compression of the stacked belleville spring washers severely distorts them within the confining tube. The distortion requires extremely high energy loads which dissipate as heat.

The INCA Safety Bumper System has a demonstrated barrier-crash effectiveness of approximately 15 m.p.h. with no overt damage to the vehicle and with significant reduction of applied deceleration forces to both the vehicle and occupants.

Projecting outward from each of the two energy-absorbing actuators is a rigid tube which serves as a "piston" within each actuator. These tubes also serve as structural members to transfer forces from the "bumper bar" assembly which is mounted outward to and parallel to the vehicle's own original-equipment bumper (which is retained as is).

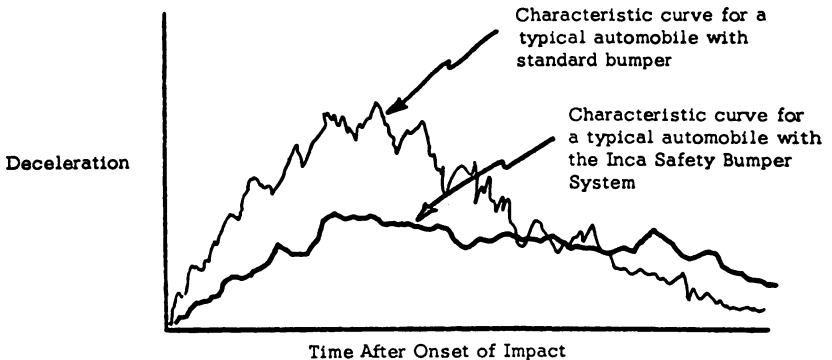


The Inca Safety Bumper System is shown here as typically installed on a 1971 Dodge Challenger sports hardtop model.



#### PERFORMANCE DESCRIPTION

The basic performance characteristics of the INCA Safety Bumper System is to reduce the severity of the forces transmitted to the vehicle occupants by "softening" the applied deceleration loads over a less-abrupt period of time.



Similarly, the INCA Safety Bumper System reduces the severity of the forces transmitted to the vehicle structure and significantly eliminates or minimizes physical and shock damage. The appended auxiliary bumper bar moves or reacts in a region in front of the vehicle fenders and body panels, providing additional measure of protection.

## ADVANTAGES

*Performance and Functional Advantages*

*Reduction of injuries to vehicle occupants* . . . by reducing the applied deceleration levels as the vehicle is abruptly stopped during a collision.

*Reduction of damage to the vehicle* . . . by absorbing and dissipating the impact energy within the belleville spring-washer units, the bumper aids in avoiding impact with the vehicle's body surfaces.

*Automatic resetting* . . . after a collision, the system automatically resets to its normal position with minimal spring-rebound. This feature permits multiple collision protection.

*Technical Advantages*

*Ultra-high reliability* . . . because it is essentially a purely mechanical system (and does not thereby include nor require any hydraulic, pneumatic, electrical, chemical or other components which would require periodic calibration, testing, adjustments, repairs or monitoring).

*High efficiency* . . . because of the high energy-absorbing and energy-dissipating character of the patented belleville spring-washer units, the total system is highly efficient, thus eliminating massive equipment, large displacements or heavy force-transfer structures.

*Compact size and light weight* . . . because of its inherent high efficiency in absorbing and dissipating impact energies, the belleville spring-washer units and other components are very compact in size and light in weight. Hence, the absorbers do not add any notable dimensional or weight changes, nor do they adversely affect road performance of the vehicle.

*Easily integrated within vehicle design* . . . due to modular design, with few basic parts and inherent simplicity, the system can be easily integrated within both present-day and evolving vehicle designs for the future.

For new vehicles, the belleville spring-washer units and force-transfer bumper assembly can be easily adapted within the structural and esthetic design of the particular vehicle as to blend within both the constraints of engineering and esthetics.

*Cost Advantages*

*Low cost of parts and installation* . . . due to the simplicity and efficiency of the system design and individual components, the consumer's cost will be generally in the \$200 to \$250 range for a typical auto installation.

*Reduction of vehicle repair costs* . . . approximately half of all collision impacts are in the range of 16 m.p.h. or less (at the moment of actual impact). The INCA Safety Bumper System eliminates vehicle damage at impact speeds up to the range of approximately 15 m.p.h. Subsequently, repair costs for the vehicle will be eliminated and greatly reduced at high impact speeds.

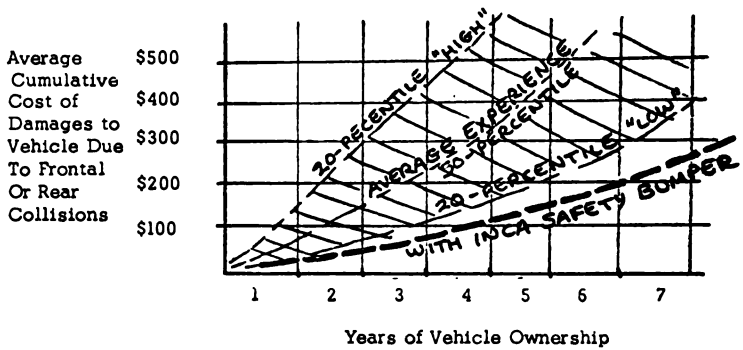
*Reduction of personal injury costs* . . . there are less severe forces applied to the vehicle occupants due to the "softened" or cushioned deceleration.

*Reduction of auto insurance costs and premiums* . . . as typified in the public offer by Allstate Insurance Company to reduce premium costs by twenty percent for those cars that could withstand a 5 m.p.h. barrier crash test with no resultant vehicle collision damage.

## REDUCTION OF REPAIR COSTS AND INSURANCE COSTS

The INCA Safety Bumper System can significantly reduce the collision impact damage to the vehicle, as well as reduce the injury-infliction potential to the vehicle's occupants.

Because of this capability, there develops a *cost-effective* rationale whereby the cost of installing an INCA Safety Bumper System will effectively displace and save the much-higher costs that would otherwise occur in any subsequent collision(s) resulting in vehicle damage and personal injuries. In a simplified way, this rationale can be graphically described as follows:



In addition to the savings realized in the cost reduction due to collision impact damage of the vehicle, there would also be a reduction of personal injuries and consequently, further reduction of associated medical expenses. In addition, insurance costs would likely be reduced to provide further savings (i.e., the Allstate Insurance Company offer to reduce insurance premiums by twenty percent for any car that can withstand a 5 m.p.h. front and rear barrier collision test without damage.)

The Insurance Institute for Highway Safety (IIHS), led by the former Director of the National Highway Safety Bureau (now the NHTSA), Dr. William Haddon, has sponsored collision tests which demonstrate the high cost of vehicle damage in low-speed crashes. The results of these tests may be summarized as follows:

#### VEHICLE CRASH DAMAGE—1970 MODEL SEDANS

5 m.p.h.—Test crashes conducted by Insurance Institute for Highway Safety showed that damage to the largest-selling 1970 sedans averaged \$217.55 at five miles an hour—walking speed.

10 m.p.h.—At 10 miles an hour—that's jogging speed—average damage was \$541.56.

15 m.p.h.—At 15 miles an hour, sedans crashing into test barrier suffered average damage of \$728.83.



Senator HART. We recess to resume at 2.

(Whereupon, at 12:20 p.m., the hearing was recessed, to reconvene at 2 p.m., this same day.)

#### AFTERNOON SESSION

Senator Moss (presiding). The subcommittee will come to order, and we will resume by calling Mr. Richard Chilcott, vice president, Family Insurance, Nationwide Insurance Cos., Columbus, Ohio.

We are very glad to have you, Mr. Chilcott.

#### **STATEMENT OF RICHARD G. CHILCOTT, VICE PRESIDENT, FAMILY INSURANCE, NATIONWIDE INSURANCE COS., COLUMBUS, OHIO; ACCOMPANIED BY ROBERT W. GRIFFITH, VICE PRESIDENT OF CASUALTY ACTUARY**

Mr. CHILCOTT. Thank you. I have with me today Mr. Robert W. Griffith, vice president of Casualty Actuary, and I would like to have him join me.

Senator Moss. Very good. I appreciate your coming too.

Mr. CHILCOTT. My name is R. G. Chilcott. I am a vice president of the Nationwide Insurance Companies. Nationwide's home office is in Columbus, Ohio, and we are the fourth largest insurer of automobiles in the United States.

I want to thank your committee for this opportunity to appear here to discuss our company's position regarding the automobile insurance system and the related subjects being considered by this committee.

We will be glad to answer questions on any aspect of the auto insurance business—now or later. But I will confine my prepared remarks to four subjects. They are:

S. 945, "The Uniform Motor Vehicle Insurance Act," which would create a partial no-fault auto insurance system in every State.

S. 946 which is designed to remove state restrictions on the sale of group automobile insurance.

S. 976 which is intended to promote the production of safe motor vehicles having greater resistance to damage.

And finally, I will briefly present for your consideration the Nationwide auto insurance reform plan developed by our companies.

I am pleased to say that Nationwide supports—without reservation—Senate bill 946 which would make it possible to market auto insurance on a group basis. In 1957 and 1958 Nationwide devoted considerable time, and executive manpower, in an effort to gain permission to market auto insurance through a true group plan.

Our efforts were not successful, but our interest in group marketing has not diminished. We fully endorse the bill that would make the economies of group sales, service, and loss prevention plans possible.

We also support, generally, Senate bill 976 although we do have some reservations about parts of it.

We favor the provision which establishes requirements for State motor vehicle registration and a uniform certificate of title program. We believe this would be a substantial improvement over the present system.

We also support the proposal that new cars can be tested against Government-developed safety standards, and that the results of the testing be made available to the insurance industry. But we have reservations about the provision which directs the Secretary of Transportation to determine how insurance companies use that information, and then to make recommendations for additional Federal legislation.

We believe, too, that it would be highly impractical for automobile dealers to attempt to provide useful and accurate information about the cost of auto insurance to their prospective customers. For example, in our home State of Ohio alone, there are over 300 separate companies whose rates would have to be communicated by the auto dealers.

In regard to the postrepair testing of automobiles, we suggest that the Department of Transportation be authorized to make further studies to determine whether such a program would be beneficial to the consumer when the costs of such inspections are compared with the possible benefits. We believe that not enough is known about how much defective replacement parts, or faulty workmanship, may contribute to highway accidents.

Turning now to the auto insurance liability system, we have studied many bills and many plans—including the Uniform Motor Vehicle Insurance Act. We find that there is much in this bill that we could support, and there are other provisions which we would recommend be eliminated or revised.

Specifically, here are some of the changes we would recommend in S. 945:

1. That the bill be expanded to include property damage, as well as personal injury, under the no-fault concept.

2. That automobile insurance be made the primary source of reimbursement for injuries or disabilities arising from automobile accidents—rather than a secondary source.

3. That reimbursement for loss of earnings be extended to age 65, rather than just for 30 months, and that disability benefits also be provided for housewives and other unemployed persons who may be accident victims.

4. That the provision for recourse to the liability system in cases of catastrophic loss be eliminated.

5. That benefits in the case of death be more tailored to the needs of survivors, and that these benefits be payable in equal monthly installments of a specified period.

6. That provision be made for the equitable distribution of high-hazard risks by spreading these risks among all companies through a reinsurance facility.

7. That the provisions be eliminated which would require a common, uniform statistical plan as well as standard policy provisions, classes of risk, and rating territories.

We believe that this also represents a step toward Federal regulation. We would much prefer a bill that would assure continuation of the established network of State regulation, but with provisions for broad Federal guidelines to establish reasonable countrywide uniformity.

As a matter of business philosophy—and, indeed, as a working principle—Nationwide has long supported a concept of self-determination and the decentralization of authority. We conduct our business that way.

Accordingly, we strongly support the position of the vast majority of insurance companies that the auto insurance business should continue to be regulated by the States, within the framework of the McCarran Act.

It is our judgment that State insurance departments should continue to provide direct regulation of insurance companies, but that they should allow a full measure of open competition. The primary concern of State insurance departments would be to assure maximum competition consistent with insurance company solvency and equitable treatment of policyholders.

This is not to say that the Federal Government cannot make a major contribution toward solution of current problems. Steps in that direction are being taken in some of the bills which already have been mentioned—such as those pertaining to group sales, to automobile safety and repair costs, and the vehicle registration and certificate of title programs.

Moreover, we believe that State regulation could be conducted within prescribed Federal guidelines adopted to encourage reasonable uniformity among State insurance laws or plans. We believe that the need for some uniformity is increasingly important at this point in time when many proposals for change are being made, and the adoption of different plans by different States could compound the problem.

While we believe that the Uniform Motor Vehicle Insurance Act is workable, it is our judgment that it does not go far enough in applying the no-fault concept.

We make this judgment on the basis of our experience, our convictions, and our extensive study and research.

As background, I would like you to know that for 9 years, Nationwide offered an auto insurance policy which gave the accident victim a choice of accepting guaranteed benefits, regardless of fault, or of pursuing his claim under the liability (fault) system.

Now on the basis of that experience, supplemented by extensive research, we at Nationwide have concluded that complete elimination of the negligence principle is the best solution to overcome some of the most pressing auto insurance problems—and their causes.

I will not dwell on those problems; this committee is quite familiar with them. I mention some of the major ones, only to put this report in perspective, and to remind you of the problems which the Nationwide plan seeks to remedy.

First, there is the question of whether the principle of liability—as it applies to auto accidents—continues to be valid in a society characterized by almost universal automobile ownership.

Second, the steadily increasing dollar costs of automobile insurance is of great concern. I should point out that some rise in costs will continue under any system as long as economic and accident trends follow their present direction.

Third, there is often delay and inadequacy in the recovery of economic loss from auto accidents, and some victims are not reimbursed at all because they cannot find a wrong-doer.

Fourth, the problem of availability of auto insurance to all car owners—or the lack of availability—in the open market is of increasing concern.

One way or another, most criticisms of the existing system are related to the liability principle upon which automobile insurance is based. Under the Nationwide plan, the liability system would be completely replaced by a compulsory first-party system. Policyholders would recover their auto accident losses from their own insurance companies. The owner of a car could not be sued by someone else as a result of an auto accident.

This is acknowledged as a point of contention. Critics of the no-fault concept argue that it relieves negligent drivers of their responsibility. But the fact is, under the present liability system, the careless driver is rarely held responsible or accountable in an economic sense. Actually, after a wrong-doer has been identified—often at great expense—he pays nothing. It is his liability insurance company that pays the bill.

What happens is that all policyholders chip in to pay the bill for the careless driver through the accumulation of premium dollars administered by the insurance mechanism. We share the public view that the wrong-doer should be punished. But we submit that punishment should be handled under the traffic laws. Insurance should not be a substitute for law enforcement.

It is illogical and unnecessarily expensive for the insurance industry to continue to spend millions of policyholder dollars to identify the wrongdoer when, in actual practice, the whole of society pays for the damage he caused anyway.

The Nationwide plan therefore disregards the question of fault in all respects. It is a compulsory system designed to make the injured party whole by taking care of his economic losses. Briefly, here is what it would do.

1. It would pay all medical expenses for as long as necessary. There is no limit on the amount.

2. It would reimburse victims for loss of wages at the rate of 85 percent of their regular earnings, up to 200 percent of the State's average weekly wage. Persons earning more than that average could buy additional income protection.

3. It would reimburse the victim for all other economic loss, including those expenses incurred for services he must hire someone to do because his injury prevents him from doing them himself.

4. It pays all necessary costs of rehabilitation, and provides incentives for the injured person to return to work.

5. It pays survivors benefits up to \$30,000. These are paid in monthly installments over a specified period.

6. It pays for property damage—up to the actual cash value of the policyholder's automobile, and up to \$5,000 for other property that may be damaged.

We believe this plan is entirely feasible and that it responds to the problems associated with the existing system of liability—that is, the increasing costs of auto insurance, the delay and inadequacy in recovery of economic loss, and the availability of protection. Here are examples of how the plan is designed to meet these problems.

1. As a first-party, no-fault system, the plan will bring about more prompt and timely payments for economic loss without the time-consuming and expensive delays associated with the liability system.

2. Because the benefits would be based on measurable economic loss, there would be a closer correlation between the amount of the loss and the amount of recovery.

3. Because the benefits would be associated with measurable economic loss, ability to recover would not be restricted to the liability limits of the "other driver's" auto liability policy. Each policyholder could obtain the amount of insurance he needs for his own protection.

4. Because all injured persons would be eligible for recovery, the plan directly meets the social problem of hardships resulting from delayed payments, or those in which the victim is not compensated because a wrongdoer cannot be found.

5. The first-party system is customer and consumer oriented. Because the customer would be dealing always with the company of his choice, the plan places a premium on prompt and efficient service.

6. The insurance product under the Nationwide plan would be available to all motorists. We would not have the tight market which is present today. This would be true because more applicants will be desirable to insurance companies than is now the case; there will be a narrower spread of rates between adult and youthful drivers and between metropolitan and nonmetropolitan areas; the reinsurance facility will broaden the voluntary insurance market to include all licensed drivers. The present assigned risk plans, or auto insurance plans, would be discontinued.

7. The plan should clarify the distinction between economic loss arising from auto accidents, and criminally irresponsible behavior which produces accidents. Under today's system, settlement of a loss by an insurance company often serves to absolve the wrongdoer from appropriate criminal penalty.

8. The plan holds promise of stabilizing the cost of auto insurance because:

It eliminates payment for pain and suffering, which cannot be identified as economic loss.

It eliminates that part of a settlement which does not reach the injured person because of legal fees.

It eliminates the expense incurred in connection with subrogation.

It reduces the expense of claims investigation, litigation, and arbitration.

It reduces the cost of the court system.

It gives impetus to the elimination of duplication of benefits which occur when payments also are made by various forms of health insurance.

We are under no illusion that the Nationwide plan will answer every conceivable problem associated with the automobile insurance business today. Every system has its imperfections.

We are quite conscious, for example, that some people will object to the elimination of payment for pain and suffering. We do not deny that pain is very real; and we know that accident injuries can cause considerable inconvenience and emotional reaction.

Under the present system, payments for pain and suffering are the largest single item of expense in compensating accident victims. Payments to injured people for pain and suffering amount to more than the reimbursements for hospital bills, doctor bills, and loss of wages all put together.

Eliminating this item should have beneficial effect on the cost of insurance coverage.

In addition, there is no equitable way to put a dollar value on pain and suffering. The amount an accident victim receives for pain and suffering—if he receives anything—depends too much on where the accident happened, the makeup of the jury, and even the persuasiveness and the forensic ability of legal counsel.

Payments are inequitable and in this sense the system is patently unfair.

There's one other consideration. It's true that a seriously injured victim may not be able to play golf, or to go fishing. But we submit to this committee that no amount of money would enable him to do those things if medical science is unable to correct the damage that has been done.

Money paid for intangible losses of this kind does not restore the ability that was lost.

We believe it is a much better thing that all injured people be reimbursed for actual economic loss—as they would be under our system—than that some people be reimbursed for economic loss, as well as for pain and suffering, and others receive inadequate compensation and sometimes nothing at all.

While our basic plan does not provide compensation for intangibles, coverage for such things would be available as an optional item at extra cost. Those policyholders who want to protect themselves against the possibility of pain and suffering in the event of an accident could buy this coverage. The amount of reimbursement would be on a fixed dollar schedule, and limited so that it would have some relation to the degree of injury.

Gentlemen, we have submitted to you only a brief summary of the Nationwide plan. Copies of the full plan have been provided for members of the committee, and at this time, Mr. Chairman, I request that the full plan be entered into the records of this hearing.

Senator Moss. Without objection, that will be done after your oral testimony.

Mr. CHILCOTT. Thank you, sir.

In summary, I want to say that we favor a bill which would permit sale and service of group auto insurance. We favor, with some exceptions, the bill designed to assure safer automobiles and lower repair costs. We believe the Uniform Motor Vehicle Insurance Act is workable but that it doesn't go far enough in applying the no-fault concepts.

And finally, we offer for your consideration the Nationwide auto insurance reform plan, which we believe to be superior to the existing system, and better than any of the other proposals for change that have come to our attention.

In our judgment, the Nationwide plan will do the most to resolve the problems associated with the present system.

Senator Moss. Thank you, Mr. Chilcott. That is a fine statement. Very specific and precise, and we appreciate it greatly.

It's most interesting to have a large insurance company like Nationwide come in with a plan worked out that is defensible and one that you have presented to us very clearly.

Where does Nationwide rank in size in insurance companies on liability?

Mr. CHILCOTT. We are the fourth largest insurer of automobiles in the country.

Senator Moss. Fourth largest?

Mr. CHILCOTT. Yes, sir. We saw you some few weeks ago when we were fifth, but we have the new records as of the end of 1970.

Senator Moss. Thank you. I congratulate you.

Mr. CHILCOTT. Thank you.

Senator Moss. And there are approximately how many insurance companies in the field? You are fourth largest out of how many? A good many?

Mr. GRIFFITH. I think close to a thousand.

Mr. CHILCOTT. I think over a thousand.

Senator Moss. At least, somewhere around a thousand? That's most interesting.

You advocate the inclusion of the property damage under the no-fault umbrella. Will such inclusion give a beneficial impact to the design of vehicles, do you think, and if so, why?

Mr. CHILCOTT. Well, I guess we'd like to hope so. We of course are hoping that the design of vehicles is going to be substantially improved in any event, whether they be paid for by insurance or otherwise.

The primary reason that we advocate inclusion of property damage is that in any change of this kind, people are probably going to be inclined to be thinking of the old system, so that if I have an accident where I strike your car, for some time ahead at least you would be thinking that you could recover from me if I was legally liable for your damage.

And if the system doesn't provide something to take care of the damage to your automobile—and this is why we would make it a compulsory system and include property damage—from which you would then recover from your own insurance company.

We could conceive of some difficult public reaction to this situation. In other words, if a person doesn't go about providing themselves with coverage for their own car, thinking they always drive carefully, and would never be at fault, and if they have a loss and there isn't some system by which they can recover that loss, we think that the public reaction would not be good.

Have I communicated the point?

Senator Moss. Well, yes. I am wondering, suppose a fellow has a very inexpensive car, all worn out, and he doesn't think that the property value is enough to even carry any insurance for himself. Is there any way for him to get out of it?

Mr. GRIFFITH. Under the proposal that we made, Mr. Chairman, there is no provision made for that. But any system of this kind is flexible.

Let me give you a few things that might be done to it. You might establish a dollar value under which it would not be necessary to carry compulsory collision insurance. Or you might use an age factor, any car over 5 or 6 years old, you wouldn't have to carry collision coverage.

I would suggest that if you feel that is a problem, it is very simple to modify the system to take care of that.

Senator Moss. That probably leads to another question I wanted to ask.

You advocate Federal guidelines to achieve uniformity, although the general administration of the system would remain with the States. Will these guidelines be mandatory, and how strict will they be?

MR. CHILCOTT. Well, this is a kind of difficult one. I guess the ideal situation would be for there to be a layer of a minimum coverage that would be required in some given period of time—say maybe a 3-year maximum or whatever was reasonable. This would provide the various States time to comply with the minimum amount of coverage to be made available to every motorist holding a valid driver's license. It would also provide time for the States to determine what additional coverage they feel the industry should make available to the public on an optional basis.

Senator Moss. There would be sort of a model bill. A minimum figure, that would be mandatory by Federal law, with States empowered if they wished to make it stricter?

MR. CHILCOTT. Yes, sir.

Senator Moss. Now in your testimony you state that the biggest cost of the present reparation system relates to payments for pain and suffering. How much of the bodily injury benefits paid are for intangibles losses of that sort?

MR. CHILCOTT. Approximately 60 percent of the payments under the bodily injury coverage.

Senator Moss. And how much of that gets through to the accident victim? How much do they benefit?

MR. CHILCOTT. Well, I guess that, Chairman Moss, will be determined a little bit by the part of the county you are in. I think it will range somewhere between 50 and 75 percent; maybe 67 percent being a fairly good average.

Senator Moss. I think the most revolutionary part of your proposal is the complete elimination of the reparation feature for pain and suffering. And I wonder if your rationale for this, since you advocate that the traffic laws be enforced is related to the pain and suffering a person experiences if he is a victim of another kind of crime, say a mugging on the street? He may get pounded on the head and have his head cut open and his vision impaired or something, and since the criminal ordinarily doesn't have any way to respond, he really gets nothing for that, does he?

MR. CHILCOTT. Yes, sir. And I think it's basically the same thing. When we started our study in 1967, the assignment to our subcommittee was that if we didn't have any system for automobile reparation that we have right now, with no system at all, what would be the best system to compensate the largest number of people for economic losses as a result of automobile accidents.

Now when the committee worked on that, they started looking for where these dollars are going right now. And in that analysis, and it was later supported rather exactly, or at least heavily supported by the Department of Transportation study, a large chunk of the money presently is being paid for the noneconomic loss that we referred to as pain and suffering.

And there is no question that it's a very real thing, but those same studies also pointed out that a good high percentage of the people weren't compensated at all.

They may have been negligent, and created their own loss, so to speak, or in some cases they found the other cars were not insured, or the person wasn't economically sound, so that there was no place for recovery.

So the point I am making is that in a good many cases, under the present system, they don't recover from pain and suffering, and secondly, we believe that this is a place where the consumer should have an opportunity—if a person is a piano player and has to have his hand, and he knows that, and he knows the possibility of accidents, we believe that he would purchase that coverage, as many of them who are in this profession do now.

Senator Moss. Just a regular insurance, outside of any vehicle?

Mr. CHILCOTT. Yes; it is a supplemental coverage for which he would pay an additional premium, and if he is injured in an accident he would receive \$100 or \$500 a week. This can be actuarially calculated quite easily and made available to those who felt they needed it.

But in order to keep the cost down, and reimbursement of the greatest majority of people for actual economic loss, something had to give, something had to come out, and we felt that is one that could come out and be supplied on a voluntary basis by a payment of an additional premium.

Senator Moss. Isn't contributory negligence a defense in most of the States now?

Mr. CHILCOTT. A great majority of them, although more and more in recent years they have been adopting the comparative negligence laws. But this is still true in a great many States; yes, sir.

Senator Moss. And for those States that still have contributory negligence as a defense, and it's a sizable accident, it's pretty hard to be able to withstand the allegation of contributory negligence; isn't it?

Mr. CHILCOTT. Yes, sir. Unless it's a very obvious case, where the car is stopped at a stop sign and struck from the rear or something like that. The answer is yes, it is in most cases.

Senator Moss. The DOT study indicated that only a third of the economic loss is recovered by the victim if the accident exceeds \$25,000.

Mr. CHILCOTT. Yes.

Senator Moss. In amount?

Mr. CHILCOTT. Yes.

Senator Moss. And so that is a very small part that comes through.

Mr. CHILCOTT. Yes, sir. And what I have said here in another way is that 66 percent—we believe that it's better that that 66-percent receive their basic economic loss than to have the smaller percent paid those much larger sums, especially since it would be made available to them if they wanted to pay for it.

We are really talking about an extremely small percentage when we talk about these unusually heavy losses. In 1968, for example, losses involving more than \$10,000 were 2 percent of our total losses, of the total number of losses reported to us.

Senator Moss. Only 2 percent?

Mr. CHILCOTT. Only 2 percent, and 27 percent of the dollars. So you see, we are talking really about a small percentage of the total people involved in the accidents.

Senator Moss. Well, it's very interesting. I think Mr. Sutcliffe said he had a technical question or two he would like to ask.

Mr. SUTCLIFFE. Mr. Chilcott, you discussed with Senator Moss the desire to mandate coverage for property damage. Can you give this committee information about any price differentials that would result,

that might be greater under a first-party system as opposed to a third-party, first-party combination?

Let me be more specific. We have received testimony that indicates that if you insured cars on a first-party basis, that any disparity between the cars as to the design for injury prevention either to the person or to the exterior of the vehicle, that any price differentials would be augmented, would be increased under a first-party mandated property damage system as opposed to a combination first-party, third-party liability system where the vehicle population, or the vehicle you are insuring was that vehicle and an unknown number of vehicles.

Do you have the information, have you collected any actuarial data to show what increase in price differential might result from a first-party property damage system?

Mr. GRIFFITH. Right off hand, I can't see any increment, but this was mentioned yesterday in the testimony—I believe it was a professor from the University of Indiana that presented it—if it would be possible for you to furnish us a copy of his testimony, we would be glad to submit a detailed response to it in terms of cost savings as we see it.

(The following information was subsequently received for the record:)

NATIONWIDE MUTUAL INSURANCE CO.,  
Columbus, Ohio, June 11, 1971.

Mr. S. L. SUTCLIFFE,  
Staff Counsel, New Senate Office Building,  
Washington, D.C.

DEAR Mr. SUTCLIFFE: This is a follow up to Mr. Chilcott's testimony before the Committee on Commerce. We agreed to review the testimony of Samuel Loescher, Professor of Economics, University of Indiana, concerning his theory that the consumer's preference for a car with lower damageability may be heightened under a first party coverage system.

We agree that first party coverage is more adaptable to offer rate incentives for safety features and lower repair costs because the incentive would be directly related to the consumers' own car. However, we differ with Professor Loescher as to the degree of incentive that can be offered.

The Nationwide policyholders who carry both coverages under the present system pay \$50 on the average for collision and \$30 for property damage liability on an annual basis. Thus, a discount on \$50 of collision premium in the present system would still be the major factor in a first party system discount.

Professor Loescher's point is more forceful in its application to personal injury coverage. Annually, Nationwide policyholders pay \$51 on the average for bodily injury liability coverage and about \$11 for medical payments or related first party coverage.

Thank you for the opportunity of commenting further on this matter. If we can provide further clarification, we will be glad to do so.

Sincerely yours,

R. W. GRIFFITH,  
Vice President and Actuary.

Senator Moss. That would be very helpful.

Mr. SUTCLIFFE. Thank you very much.

Mr. CHILCOTT. I want to be sure there isn't anything implied in your question. Let me make a statement. We do not feel that the system we proposed to you would cost any more than the present system. And we know it would reimburse a great many more people.

Mr. SUTCLIFFE. Yes, yesterday we had an exchange which was based upon some testimony that had been presented to the House, which said that suppose you give a discount for vehicles that have low sus-

ceptibility to damage, and say that discount is 20 percent of the premium rate on the collision coverage, if you went to a first-party system, you would be eliminating the bodily-injury liability part of the policy.

And the theory was that you would have a multiplier effect on the discount, so that instead of a \$24 indicator, of difference between car A and car B as to the property loss potential, that might be multiplied, as this professor said, by a factor of three, so that the price differential per year came out to \$72 a year, which was a larger indicator to the consumer, so that his preference for the car with the lower damage-ability would be heightened under a first-party liability system.

That is the kind of information I would like you to furnish to see whether or not that argument has validity.

Mr. CHILCOTT. I understand now the point you are making, and we would be glad to see what we could develop to give you some idea on that, at least an opinion on it.

Mr. SUTCLIFFE. Thank you. Now under your proposed plan, every insurer is required to write every applicant that it receives. In other words, it parallels the provision in S. 945 that requires you to accept every application of every insurer that has a valid license and hasn't committed fraud and pays the premium?

Mr. CHILCOTT. Right.

Mr. SUTCLIFFE. For the committee, would you at this point in the record explain the reinsurance program you have in mind, and how it would displace—as I assume it would—the assigned risk plans in the States.

Mr. CHILCOTT. Yes, sir.

Mr. GRIFFITH. The idea is shown in exhibit 2 of the report that you have. The fact is that in order to make sure that all persons who are entitled to auto insurance can get it without any difficulty whatsoever, we have to find a way to distribute the costs of the less desirable risks.

Mr. SUTCLIFFE. Are the assigned risk plans presently supposed to be doing that?

Mr. GRIFFITH. Yes, for the liability coverages only, and for basic limits only. This system of course goes well beyond liability since it includes of course the medical and collision insurance also.

We think people ought to have these coverages available to them.

Now to spread the risks of the less desirable drivers, those with poor records, we suggest a reinsurance facility so no individual insurance company would be hurt financially by insuring such risks, because it could be fully reinsured in the pool, and then all companies would take their proportionate share of whatever loss there might be in the reinsurance pool.

Mr. SUTCLIFFE. This would be a total reinsurance pool; in other words, each company wouldn't have a reinsurance applied to it above a certain level of loss, it would be total?

Mr. GRIFFITH. A total reinsurance pool.

Mr. CHILCOTT. The primary difference in the proposal we have and the operation of the present auto insurance plans, or assigned risk plans, is that you keep the public out of this consideration.

So that if I applied to X company for insurance, and I am a bad risk, I am accepted; and as far as I am concerned, I never know

that there is some kind of a facility by which these are distributed equally.

We think it will be a lot better from a public acceptance point of view.

Mr. SUTCLIFFE. In your prepared testimony, you mentioned that one advantage of the system that you propose, which parallels to a great extent the S. 945 before this committee, is that you would eliminate the expenses connected with subrogation or arbitration.

Could you be specific as to what those expenses are, because we have had testimony from other insurance industry representatives suggesting that their plans embodying subrogation or arbitration procedures also have a cost-effective savings.

Mr. GRIFFITH. This may be true. One of the reasons we recommend the complete elimination of the tort system is that it takes away any need to determine fault.

Now when you talk about subrogation or arbitration, you are talking about the fault system. And it is certainly much cheaper to completely eliminate all need for arbitration or subrogation than it is to simply modify the present system.

Mr. CHILCOTT. Some of the expenses incurred in the present system in subrogation, just the same as the rest of the liability system; and one of the things we were searching for was how to keep the expense part of the dollar down, too.

Mr. SUTCLIFFE. In that connection, could you supply the committee for the record as detailed an analysis as you can of what you think your plan would do to the allocation of resources under the present insurance system?

And if you would, assume a premium volume of \$14.4 billion, which the update of the Department of Transportation's study now pegs as the total premium collected, and we will also provide you the figures that we have for benefits paid out and principal economic loss and bodily injury and property damage information.

If you take those figures, and then for the record try as best you can analyze what the cost impact of the implementation of your plan would be on our present compensation system?

Mr. CHILCOTT. We will surely take a stab at it, yes, sir.

(The following information was subsequently received for the record:)

#### AUTOMOBILE INSURANCE, 1970

(In billions of dollars)

	All auto insurance	Bodily injury	Property damage
Premiums earned.....	14.4	6.9	7.5
Insurance overhead.....	5.0	2.0	3.0
Lawyers fees and other litigation expense.....	.2	.1	.1
Net benefits paid to cover bodily injury and property damage.....	9.2	24.8	24.4
Compensable economic loss <sup>1</sup> .....	12.0	6.5	5.5
Percent of loss covered.....	75.8	72.3	80.0

<sup>1</sup> Wage and medical loss, and future earnings of fatality victims with dependent survivors and property damage.

<sup>2</sup> Property damage benefits are reduced from the present system even though the proposed plan has a compulsory collision coverage. The reason for this is that, while all persons will have this coverage, it will have a deductible feature. The reduction because of the deductible is greater than the increase due to universal coverage. The net benefits for bodily injury are much greater than in the present system mainly because the plan will compensate all parties injured in automobile accidents for their full economic loss.

Source: Adjustments were made to data developed by the Senate Commerce Committee to estimate the working of Nationwide's plan.

Mr. SUTCLIFFE. We will appreciate having that kind of input. It would be very helpful to our deliberations.

You suggest that all coverages under the plan be primary?

Mr. CHILCOTT. Yes, sir.

Mr. SUTCLIFFE. On Monday, May 3, we received testimony from consumers Union suggesting that that decision be left open to individual consumers because some insurance coverages, in the health area particularly, have a higher cost efficiency benefit than present first-party coverages under the automobile compensation system.

He was talking about ranges of 90 percent efficiency as opposed to first-party coverages of 70 percent. Assuming differences in efficiency, would you allow for that consumer choice and only insist on primary coverage if you could assure that there would be comparable efficiencies between competing coverages?

Mr. CHILCOTT. Let me comment and then I will have Mr. Griffith comment too.

One, there is some expense involved in determining what, other insurance is available. And coming back to the point, one of our efforts was to try to pick out all of the expense money that was possible under this system.

So that if this is the primary coverage, we believe in the not-too-distant future, that the other types of coverage that might handle this loss would be revised or amended, or whatever, so that they became secondary coverage.

Mr. GRIFFITH. We believe that the automobile ought to carry the total cost of its operation. That is the reason the plan is built the way it is.

We also recognize that it would be extremely difficult to attempt to price a system where other benefits, other coverages or types of policies would come in first.

To be fair, you would have to consider on each individual case what accident and health coverage, Blue Cross, Blue Shield, medicare, was available to the individual applicant. And thus modify the price for each one of those individuals.

Furthermore, if after having done so, the man changes employment, no longer is eligible for group insurance benefits from his old employer, and then has an accident, he would find himself underinsured.

So we think it is far better to be sure that everybody recovers their economic loss, and, to do this, you almost have to make the auto insurance system the primary system.

Mr. SUTCLIFFE. Do you believe that your particular company can meet the efficiency competition of other insurance sources?

Mr. GRIFFITH. I am sure we could not meet the efficiency of, for example, the Social Security System, or group accident and health insurance where you have large groups.

But this is one reason we are favoring the group insurance law that you are proposing. Now, this would greatly improve the efficiency.

Mr. SUTCLIFFE. Have you considered the utilization of standard deductible approach for meeting the duplication of benefits problem, so that your cost problems of ascertaining different levels of coverage for individuals would be minimized?

Mr. GRIFFITH. That would help to minimize them, yes.

Mr. SUTCLIFFE. So that would be one alternative you might have in the way of primary-secondary problems?

Mr. GRIFFITH. Yes.

Mr. SUTCLIFFE. Did I understand you to say that your company would consider selling what in fact might be a first-party pain-and-suffering provision within the policy?

Mr. GRIFFITH. Yes; something, however, that would be definitely limited in sum. Perhaps geared to economic loss, perhaps geared to medical expenses, so it would be some direct relationship to the amount of pain and suffering.

Mr. SUTCLIFFE. So you would avoid the determination costs? You would fix that cost at the time the policy was issued?

Mr. GRIFFITH. Yes. Right.

Mr. SUTCLIFFE. And suppose that the pain-and-suffering part of S. 945 were amended to require this as an available option, would that be something that you think would be satisfactory?

Mr. GRIFFITH. That would be a big improvement, we think.

Mr. SUTCLIFFE. What do you do with the problem of disfigurement? We have constantly in these hearings heard about the disfigurement hypothetical, where you can't base it on any kind of a medical loss necessarily, but you do have something that many people feel should be compensated.

Do you have any response to the disfigurement hypothetical?

Mr. GRIFFITH. This is the same issue as all your intangible benefits. What is a true dollar value of disfigurement that cannot be corrected? None of us know.

Mr. SUTCLIFFE. Let me stop you right there. I guess you mean all costs connected with trying to repair any disfigurement?

Mr. GRIFFITH. Right.

Mr. SUTCLIFFE. No matter how long it took?

Mr. GRIFFITH. Correct. The rehabilitation effort includes all medical procedures to correct disfigurement, for example. Now when you get into such things as loss of limb, sight, hearing, if this is felt to be desirable, the health industry now offers coverage for loss of limb, sight and hearing, in specific dollar amounts, if they want to pay the premium for that type of coverage.

Mr. CHILCOTT. We would want to include this as an optional thing in any plan we would have.

Senator Moss. That is what I understand.

Mr. SUTCLIFFE. But you wouldn't mind it being treated as a mandatory option?

Mr. GRIFFITH. Right.

Senator Moss. Is Nationwide a member of the National Association of Independent Insurers?

Mr. CHILCOTT. Yes, sir.

Senator Moss. You then are not in agreement with the position taken by the association, is that right?

Mr. CHILCOTT. One of the privileges you enjoy by belonging to the National Association of Independent Insurers, Mr. Chairman, is that you are not bound by the policy or the decisions that are made in individual situations.

Senator Moss. Which is a happy thing. I'm glad to hear it.

Mr. CHILCOTT. Yes, sir. Now as a matter of fact, Mr. Griffith and another one of our associates participated in the development of the plan that has been offered by the NAII, and it's a fine plan, we think,

as far as it goes. We just—our difference with it is it doesn't go far enough.

Senator Moss. It doesn't go far enough?

Mr. CHILCOTT. Yes, sir.

Senator Moss. Senator Hart is here. Do you have any questions?

Senator HART. Except to thank the gentlemen very much for the tone of their testimony. Needless to say, it's encouraging.

Senator Moss. Thank you, Mr. Chilcott, and Mr. Griffith, for your very fine testimony. We appreciate your willingness to respond to the additional requests for information we have made. Thank you.

Mr. CHILCOTT. Thank you, Senator, for the opportunity to appear before you.

(The attachments follow:)

STATEMENT R. G. CHILCOTT, VICE PRESIDENT, FAMILY INSURANCE, NATIONWIDE INSURANCE COMPANIES, COLUMBUS, OHIO

#### PART I—STATEMENT OF THE PROBLEM

The existing auto liability insurance system has been the subject of increasing concern during the last decade. Nationwide Mutual Insurance Company has long been concerned with the type of system and insurance product that would meet the real needs of the auto owning public. Our concern has resulted in specific attempts to meet these public needs ranging from our revolutionary family compensation coverage introduced in 1956 to our action of adopting a five year guaranteed renewable auto policy in 1968. The family compensation coverage provided for payment for medical expenses and wage losses to all persons injured in an auto accident, regardless of fault, provided that those who had a right to payment because of the negligence of our policyholder would sign a release. This coverage was meant to supplement the legal liability system.

As another evidence of the company's concern for meeting the auto insurance needs of the public as well as answering the mounting criticism of the present system, a research committee was appointed to study the social, political and economic aspects of the existing auto insurance system. Prominent in the research group's efforts has been in-depth investigation of all the alleged shortcomings of the automobile tort liability system as well as the public and legislative criticism directed at insurance industry practices. This investigation included an examination of the many plans which have been advanced since 1930.

The research group has identified the major areas of concern as follows:

#### *I. The principle of tort liability as it applies to auto accidents and its continuing validity in a society characterized by the phenomenon of almost universal car ownership*

A related consideration is the increasing difficulty of establishing fault for auto accidents in these days of high powered automobiles and high speed highways. The following quotation from one critic of the tort system will serve as an example:

"The whole system of liability insurance rests squarely on the accepted premise that each individual should be held accountable for his misdeeds. I am sure this was recognized in human relationships long before the principle was formally set forth in law. It has worked well in criminal law because the individual can, indeed, be made accountable—by jail sentence if need be.

"It does not work so simply in automobile liability insurance. The fact is, the wrongdoer in an automobile accident is rarely held accountable in an economic sense. Actually, after a wrongdoer has been determined to be the guilty person, often at great expense, he pays nothing—it is his liability insurance company that pays the bill. What happens is that all society chips in to pay the bill for him through the accumulation of premium dollars administered by the insurance mechanism.\*

"It is not at least valid to ask whether the insurance industry should continue to spend millions of dollars to identify the wrongdoer when, in actual practice, the whole of society pays for the damage he caused anyway?"

\*In the public mind the wrongdoer should be punished. It is more appropriate that punishment be handled under the criminal law.

## *II. The steadily increasing dollar cost of automobile liability and auto physical damage insurance*

The gradual increase in the numbers of automobile accidents combined with the inflationary effect of almost every element involved in the evaluation of economic loss from automobile accidents has necessarily forced the price of both automobile liability and physical damage insurance upward in recent years. Although the public understands that the cost of repairing automobiles and the cost of repairing human bodies is steadily increasing, they are not happy when it comes their turn to pay their share of these economic costs. The public also realizes from their reading of the daily newspaper that numbers of automobile accidents are on the rise, but again, they are unhappy when they are asked to pay their part of these increased costs—particularly if they, themselves, have been fortunate enough to have avoided an automobile accident in the recent past.

Lest the point be missed, *any* automobile accident reparations system, whether it be the present system or some other, will be confronted with the need to finance payments for injuries and for damaged property. Economic losses from auto accidents under any system will steadily increase in the years ahead unless by some miracle automobile accidents become fewer, and such economic losses as wages, garage labor rates, hospital daily room costs, and doctor's fees decline.

The concern about rising automobile insurance costs has thrown the limelight on certain features of the present automobile reparations system. This is so because these costs are necessarily built into the insurance premiums which the public is asked to pay. Critics of the system make these points:

1. *Inefficiency.*—The process of determining fault under the tort liability system is often time-consuming and costly. Under the adversary system it is necessary that each accident be investigated by legally trained personnel to determine the individual responsible for the accident. Once fault is determined, the system calls for sometimes lengthy negotiation with the injured person in order to establish a dollar value of the injured person's losses. In case of disagreement, the courts are asked to make a final determination, both as to the issue of fault and as to the issue of damages.

2. *Cost of legal services.*—The tort liability system supports and fosters the provision for expensive legal services. In the case of the plaintiff, he must pay his attorney, usually on a contingent fee basis. For the defendant, there must be costly defense counsel which is usually paid by the defendant's insurance company which becomes a part of the expense that must be considered in setting the insurance rate.

3. *Excessive build up in medical costs.*—It is claimed that the present tort system encourages the build up of so-called "specials" because it is on them that the settlement for general damages on pain and suffering is based. Together, these increased medical costs and increased amounts for pain and suffering maximize the amount of the plaintiff's attorney's contingent fee.

## *III. Delay and inadequacy in recovery of economic loss from auto accidents*

The tort liability system provides no guarantee that economic losses resulting from automobile accidents will be compensated at all. Many injured persons or persons with damaged property are uncompensated because of their inability to establish negligence on the part of some wrongdoer. Others, where fault is questionable, may recover only partially for their losses or injuries.

Even where there is full recovery for both economic and intangible losses under the tort liability system, such recovery is often secured only after substantial delays. These are the delays inherent in the adversary system where fault must first be determined and finally the amount of damages established—sometimes via the judicial process. Even a delay of a few months works a substantial economic hardship on many accident victims.

It is claimed that there is a lack of reasonable relationship between the amounts of settlement and the extent of losses in automobile accident cases. Studies have consistently shown that relatively small claims are over compensated whereas accident victims involving substantial injury are often inadequately compensated.

Critics of the tort liability system emphasize that the uncertainty, the delay, and often the inadequacy of compensation imposes substantial hardship on members of the public and that therefore consideration should be given to some type of reparations system which is based on a no-fault principle.

#### IV. Availability of automobile insurance to all car owners

Tied in with the tort liability system has been the enactment of laws requiring car owners to prove they are financially responsible before they can operate their cars on the nation's highways. To protect society, such laws have been progressively strengthened over the years until today the vast majority of car owners find it necessary to purchase automobile liability insurance. Licensing authorities and the judiciary are often criticized for permitting dangerous drivers to continue to jeopardize the life and property of the general public. But because many of these dangerous drivers are still permitted to drive, the insurance industry is asked to provide insurance protection for them, often at substantially inadequate rates. In a free enterprise society, and particularly one where a substantial degree of competition exists, automobile insurance carriers must necessarily attempt to attract as customers the vast majority of car owners who are average or better than average drivers. The small residue of drivers who fall in the marginal category often find it difficult to secure auto liability insurance at standard rates. The insurance industry makes provision for insuring these drivers under the so-called automobile insurance plan, usually at rates that are grossly inadequate for this group of drivers.

A phenomenon of recent years has been the inability of insurance companies to secure adequate prices for their product in some states. The natural consequence of being forced to operate at an inadequate price is a tightening of the market for automobile insurance—forcing many car owners who were formerly considered average risks into the marginal risk market.

The lack of the availability of insurance, where it exists, militates against adequate protection of the public.

#### PART II—A PLAN FOR REFORM

##### A. A first party reparations system

It is clear that the criticisms of the existing system are overwhelmingly intimately related to the tort liability system upon which automobile liability insurance is based. This fact leads to the conclusion that the best long-range solution to the problem of assuring compensation to all automobile accident victims lies in the development of a system under which compensation for economic loss will be provided without regard to fault and on a first party basis between the insurer and the insured. In other words, the tort system, as far as its application to automobile bodily injury and property damage is concerned, would be eliminated and completely replaced by a compulsory first-party system. This means that policyholders would recover their economic loss from their own insurance companies. The owner of a car could no longer sue the person who caused the accident nor could he be sued by someone else.

The details of such a first-party system are spelled out in Exhibit I. In general, it is designed to make the injured party whole by taking care of his economic loss arising from:

1. Medical expenses—Unlimited.
2. Short and long-term wage loss—85 percent of earnings up to 200 percent of the state average weekly wage.
3. All other economic loss including expenses reasonably incurred for services in lieu of those the injured person would have performed without income.
4. Cost of rehabilitation (with incentives to return to work)—Unlimited.
5. Survivors' benefits—Up to \$30,000.
6. Property damage—Actual cash value for automobiles; up to \$5,000 for other property.

This coverage is designed to make certain that every person injured in an automobile accident can recover his economic loss. To accomplish this objective it is necessary that these benefits be made compulsory. This plan is designed to provide reasonable coverage at reasonable rates. For those who feel that they should have higher benefits, optional coverage at an additional charge will be made available.

The plan, as outlined, has several features which distinguish it from other plans. Some of these features are truly innovative.

1. The plan would be notably more comprehensive in conventional benefits than other plans have offered and hence would meet the criticism that too often the existing system fails to meet reasonably the total economic loss incurred. Examples of this greater comprehensiveness are to be found in the:

a. Unlimited payment for reasonable and necessary medical expenses, including that incurred in extended care facilities and for medically supervised home care services.

b. Payment for extended disability income up to age sixty-five.

2. A rehabilitation benefit would be included that, uniquely, would be an integral part of the benefit system and provides for cooperative procedures involving the claimant, the insurer, and bona fide rehabilitation agencies.

3. The plan uniquely provides incentives to return to gainful employment. This is accomplished by disregarding, in the computation of the benefits to be paid, a portion of the earnings in new employment.

4. The plan avoids the pitfalls of scheduled benefits by:

a. In the case of medical procedures, basing compensation on reasonable and necessary costs rather than on fixed limits per procedure; and

b. In the case of wage loss, incorporating an upper limit that will be automatically adjusted to the level of average weekly wages in the State.

5. Survivors' benefits are designed to serve during an adjustment or tiding-over period and hence, in the case of survivors of principal wage-earners or housewives, are payable in monthly installments; in the case of survivors of wage-earners, the installments are related to previous earnings.

The plan does not deal directly with the problem of payments received from other sources of insurance or wage continuation plans, etc. except for those provided under governmental programs which do not impose a needs test. Under current conditions, taking into account these other sources of duplicate payments would have very uneven, and a probably inequitable, effect. Furthermore, it would not be long before other systems would themselves preclude duplication as they now do with Workmen's Compensation.

#### *B. Competitive administration in a free enterprise system*

The Plan contemplates and, indeed has as an essential element, implementation through a competitive system of pricing, merchandising, and product development. The public interest is best served by a competitive system for the following reasons:

1. The best claims and other policyholder services can be expected to result from a competitive system. Each company may be expected to try to excel in providing policyholder satisfaction because such satisfaction is a principal ingredient of any company's program to grow and to increase its share of the market.

2. A competitive system will serve best to keep the price of the product at a level which will reflect most efficient administration. Specifically, it can be expected that companies will compete in devising:

- a. improved and more efficient methods of claim administration, and
- b. methods for reducing general expenses.

In this connection, it is important to recognize that the trend of increasing medical costs and increasing wages will inevitably cause the insurance cost of the proposed compensation system to increase. Competitive efforts to reduce costs (both expenses and loss costs) will help offset these inflationary trends.

3. Associated with the preceding point is the fact that experience demonstrates that under a competitive system a persistent effort will be made to achieve improved ways to relate premiums paid by policy-holders to the hazard insured. Competition assures a more equitable distribution of the cost of insurance.

4. A competitive system will encourage making available to the public a product that exceeds the statutory minimum. Examples of what may be offered are higher limits on wage loss (for the upper income groups), loss-of-use coverage under damage to property, and even, as suggested by Keeton-O'Connell, payment for pain and suffering.

5. It is basic to the free enterprise system that competition provides better regulation of prices, products, and services than that which can be effectively imposed by government. The concern of government should be to assure maximum competition consistent with insurance company solvency.

6. A plan providing for minimum statutory benefits under private competitive administration is in accord with the climate of current public and government thinking and practice; e.g., specialized products developed and produced by private enterprise under competitive bidding for governmental use. To duplicate in government the know-how already possessed by private insurance agencies would be wasteful and inefficient.

### *C. Equitable distribution of high hazard risks*

Every company and agent will be required to accept every applicant for insurance. High hazard risks will be insured under a standard, uniform rating plan established by the industry.

It is recognized that under any plan, there will be drivers whose loss experience or driving record will make them undesirable as insurance risks. These drivers will probably have to pay higher premiums under any system which allows competitive rating or classification. It is doubtful, however, that premiums charged to these poor drivers will be adequate to pay the losses they produce. There is, therefore, a need to provide for a method to spread the cost of insuring these high hazard individuals equitably among all individuals insured in a state. The basic principle to spread such risk will be reinsurance—in contrast to the poor arrangement of the assigned risk plan—so that the policyholder can be insured in the company of his own choice. Policyholders to be reinsured would be a different group than presently in the assigned risk plans. Present plans have many elderly, youthful, low-income, and military personnel drivers. Some of these, under the Reform Plan, would be acceptable at normal or standard rates. Relatively few risks would need to be involved in the reinsurance process. See Exhibit II for the outline of this reinsurance proposal.

### *D. Uninsured claim fund*

Acknowledgment is also given to the fact that compulsory insurance is never completely enforceable; hence an uninsured claim fund is established to provide benefits to persons who are not members of a car-owning family and who are involved in an accident with an uninsured automobile. A similar principle is applied to property loss.

### *E. Residual liability*

Assuming the enactment of this plan in a given state, it will be necessary to provide policyholders with a residual liability coverage especially for out-of-state driving where the tort system is in effect.

## **PART III—EVALUATION OF THE PLAN**

The Plan for Reform serves to meet the problems associated with (a) the existing system of tort liability, (b) increasing costs of auto insurance, (c) delay and inadequacy in recovery of economic loss and (d) the availability of protection, as they were reviewed in Part I of this Report. Features of the plan designed to meet these problems are:

A. As a first party, no-fault system, the plan lends itself to the prompt, timely, payment of benefits for economic loss without the delays associated with the adversary system. The tort system presents controversy as to the question of fault as well as the amount of damages. There may still be some controversy under the first party system as to the amount of loss but this should be minor.

B. Because benefits would be associated with measureable or ascertainable economic loss, there would be a closer correlation between the loss or damages and the amount of recovery. Thus, the plan avoids results which are now found where individuals with substantially the same loss are reimbursed with substantially different amounts.

C. Because benefits would be associated with measureable or ascertainable economic loss, ability to recover would not be restricted to the liability limits (or even existence) of someone else's automobile liability policy. (The effect of this limitation is particularly evident in coverage for the assigned risk, the underinsured, and the uninsured.)

D. Because all injured parties would be eligible for recovery, the plan directly meets the social problem created by hardships resulting from delayed payments or unmet losses arising from automobile accidents. Under a liability insurance system, it is the innocent third party who suffers when a car owner fails to carry insurance. Under the suggested first party system, failure to carry insurance penalizes only the car owner and his family.

E. A first-party system is customer and consumer oriented. It places a premium on prompt and efficient service. In addition, it enables the customer to deal with the company of his choice. Consequently, by replacing the adversary system and providing for the payment of benefits by the injured person's own insurer, a more wholesome relationship between the insurance industry and the public will result.

F. The public should find that the insurance product under the Plan is substantially more available to it than is the automobile liability product. This will be true because under the Plan:

1. More applicants will be desirable to insurance companies than is now the case. Examples of the more acceptable risks are the youthful, the elderly, and servicemen.

2. There will likely be a narrower spread in premium rates than exists today. It is expected that under a first-party system, the spread of rates between adult and youthful drivers—and between metropolitan and non-metropolitan areas—will be less.

3. The optional reinsurance provision for Special Class business will broaden the voluntary insurance market to include all licensed drivers and will remove the stigma of the assigned risk plan.

G. The Plan may serve a socially useful purpose in clarifying the distinction between economic loss arising from auto accidents and criminally irresponsible behavior resulting in accidents. To too large a degree today the settlement by an insurer of the loss serves to absolve the guilty wrongdoer from criminal penalty.

H. The Plan holds promise, in spite of compensating *all injured persons* for their total economic loss, of stabilizing the total costs of the existing system because it should:

1. Eliminate the cost now incurred for that part of "pain and suffering" which cannot be identified as economic loss.

2. Eliminate that part of settlements, included in the "pain and suffering" referred to above, which does not reach the injured person because of contingent fees.

3. Eliminate expense incurred in connection with subrogation.

4. Reduce claims investigation, litigation and arbitration expense.

5. Reduce the cost of the court system which now spends a substantial portion of its time on automobile accident cases.

6. Give impetus to the elimination, by various forms of health insurance, of duplication of benefits.

These reduced costs will be counterbalanced by the fact that the Plan will compensate many more people than under the present system simply because fault no longer has to be established to receive payment.

#### EXHIBIT I—AUTOMOBILE COMPENSATION COVERAGE

(This coverage would completely replace the present tort system for property damage, injuries and death arising from automobile accidents.)

This is a compulsory compensation coverage for property damage, bodily injury, and death resulting from automobile accidents. The coverage compensates for:

1. Collision damage to the described automobile and to other property (but not including other automobiles).

2. Injury and/or death to the insured and his dependents resulting from any automobile accident.

3. Injury and/or death to other occupants of the described automobile who have no coverage under their own policy.

4. Injury and/or death to pedestrians and cyclists who are struck by the described automobile and who have no coverage under their own policy.

5. Other out-of-pocket expenses, including paid help, transportation, and miscellaneous loss.

The coverage is payable without regard to fault and without regard to other forms of insurance except that it shall be excess over like benefits payable by Workmen's Compensation and by governmental programs which do not impose a needs test such as Medicare, Social Security, Veterans' Plans, and State Temporary Disability Benefits.

Coverage provisions are tied closely to rehabilitation services and are designed to encourage early recovery from serious injury.

The basic compulsory coverage is outlined below. Higher limits of coverage for extended disability income and for survivors' benefits will be made available for those who desire to purchase it.

#### DAMAGE TO PROPERTY

To pay for accidental collision damage to the described automobile and to other property (excluding other automobiles). Damage to the described automobile will be subject to a deductible selected by the insured. Damage to other property will not be subject to the deductible provision. The coverage limit on damage to the described automobile is its actual cash value; the coverage limit on damage to other property is \$5,000. Comprehensive coverage will be made available but will not be compulsory.

#### MEDICAL PAYMENTS AND REHABILITATION EXPENSE

To pay all reasonable expenses for necessary medical, dental, surgical, ambulance, hospital, extended care facility, professional nursing, and medically supervised home care services; to pay all reasonable expenses for necessary prescribed prosthetic devices; to pay for reasonable funeral costs up to \$1,000.

To pay all reasonable expenses not included above for necessary rehabilitation center services; for occupational, physical and speech therapy; for prostheses and other adaptive mechanisms, including training in their use; and for vocational counseling, pre-vocational training, vocational training or retraining, work try-outs and placement services. The company shall not be liable, however, for any costs of rehabilitation which are available and accessible from existing public or community rehabilitation services.

#### DISABILITY INCOME

To pay the benefits stated in the schedule below during the period of disability up to and including sixty days following the accident. The period of disability is defined as the time during which the injured person is unable to engage in his regular occupation or, if not employed, in those normal pursuits to which he is accustomed. The injured party must be under the care of a licensed physician.

#### EXTENDED DISABILITY AND REHABILITATION INCOME

To pay extended disability income stated in the schedule below, after sixty days from the accident and up to age sixty-five, if:

(1) The injured party is actively engaged in restorative procedures as recommended by the company which are reasonably designed to correct or substantially reduce his injury or to prepare him for a different and appropriately selected occupation for which he would not be handicapped;

(2) Both the injured party and the company agree to continue such procedures and so long as the injured party cooperates with bona fide rehabilitation agencies.

(3) The injured party is unable to actively engage in restoration procedures for good and sufficient cause.

In the event that the injured party assumes a different occupation at a reduction of income from his occupation prior to the injury, the extended disability income will be continued and will be determined by deducting two-thirds of the injured party's earnings from the income benefit.

Beneficiary	INCOME SCHEDULE	Income benefits
1. Person earning a regular income.		1. 85 per cent of weekly wage or weekly earnings up to 200 per cent of the average weekly wage in the state.
2. Housewife.		2. \$50 each week.
3. All others.		3. \$25 each week.

## SURVIVOR'S BENEFIT

To pay the benefits stated below for death within five years following the accident, payable to the surviving spouse or to a duly appointed representative.

<i>Deceased</i>	<i>Benefits</i>
1. Principal wage earner with dependent child surviving.	1. 100 per cent of three years' wages or three years' earnings up to a benefit maximum of \$30,000, payable in equal monthly installments.
2. Principal wage earner with no dependent child surviving but with spouse surviving.	2. 100 per cent of one year's wages or average yearly earnings up to a benefit maximum of \$10,000, payable in equal monthly installments.
3. Housewife with a dependent child surviving.	3. \$5,000 payable in one year in equal monthly installments.
4. Child under ten years of age.	4. \$1,000—lump sum payment.
5. All others.	5. \$2,500—lump sum payment.

(Where the deceased fits the description in more than one category, that category with the higher benefits will be applied.)

## UNINSURED CLAIM FUND

This fund will be administered by insurance companies designed to provide these coverage benefits for injury to persons who are not members of a car-owning family and who are involved in an accident with an uninsured automobile or automobiles. This fund will not provide coverage, however, to the owner of any uninsured car or to his dependents. All other injured parties will have coverage.

This fund will also be used to pay for damage to other property (excluding automobiles) where damage results from collision involving an uninsured automobile.

## EXHIBIT II—A REINSURANCE PROCESS TO ASSURE EQUITABLE DISTRIBUTION OF HIGH HAZARD RISKS

In order to broaden the insurance market to include all licensed drivers and to remove the stigma of the assigned risk plan, an "optional reinsurance provision for Special Class risks" is recommended. (Special Class risks are those high hazard individuals who, because of driving record, physical or mental disability, or some other personal characteristic, warrant special rating.)

Each company would be required to insure any individual who seeks coverage. The company would have the option to reinsure any individual from whom it had collected a Special Class rating under a standard, uniform rate plan established by the industry. All companies doing business in a state would be required to participate in the reinsurance losses or profit on the basis of each company's total car years of exposure to the total of all car years of exposure in the state. This would have the effect of distributing to each individual insured in the state an equal share of the cost which cannot, because of prohibitively high rates, be passed on to high hazard risk individuals. Since not all Special Class rating cases would require reinsurance, neither the individuals involved in reinsurance nor their agents would know who the reinsured cases are.

The insurance carrier would be required to cede 100% of the premium to the reinsurance pool. A commission equal to the ceding carrier's expense level, including loss adjustment expense, as shown in its insurance expense exhibit, or 30%, whichever is smaller, would be paid. Actual losses would be paid by the insurance carrier and recovered from the reinsurance pool.

In conjunction with the reinsurance pool, there should be an industry committee to work with regulatory authorities of the individual states. Machinery should be set up to review those insureds whose records would indicate the need to consider whether or not the individual should be allowed to drive. The committee would also be responsible for policing the industry and for establishing safeguards to prevent individual companies from abusing, or profiteering from the commissions in, the reinsurance arrangement.

Senator Moss. Mr. Warren J. McEleney, president of the Automobile Dealers Association, will be our next witness. He is accompanied

by Mr. Frank E. McCarthy, executive vice president. We are glad to have you gentlemen before us, and look forward to hearing your testimony.

**STATEMENT OF WARREN J. McELENNEY, PRESIDENT, NATIONAL  
AUTOMOBILE DEALERS ASSOCIATION; ACCOMPANIED BY FRANK  
E. MCCARTHY, EXECUTIVE VICE PRESIDENT**

Mr. McELENNEY. Thank you very much. My name is Warren J. McEleney. I am a Chevrolet-Oldsmobile-Cadillac dealer from Clinton, Iowa, and the president of the National Automobile Dealers Association.

As president of NADA, representing some 20,000 franchised new car and truck dealers, both domestic and foreign, I appreciate the opportunity to present the views of our association to your committee on S. 976, the Motor Vehicle Information and Cost Savings Act.

Our members are vitally interested in many provisions of this far-reaching piece of legislation. However, in the interest of time, I would like to direct my remarks primarily to those areas of most immediate concern to our dealers. The first item I would like to discuss is the odometer amendment.

Before taking up the original provisions of S. 976, I would first like to indicate our strong support for the adoption of an amendment to the bill, offered by Senators Magnuson and you, Senator Hart, and I want to add we are grateful for your interest in this legislation, which would provide for a Federal odometer law.

NADA has consistently supported governmental action, either by way of a Federal regulation requiring tamperproof odometers or by legislation which would prohibit the alteration of odometers with intent to defraud purchasers.

In 1967, the Federal Highway Administration announced that it was considering the issuance of a Federal motor vehicle safety standard specifying requirements for tamperproof odometers on passenger cars, multipurpose passenger vehicles, trucks, buses, and motorcycles. NADA supported their proposal at that time.

Since a completely tamperproof odometers has not been developed, such a standard has never been issued. Consequently, NADA supports the enactment of Federal legislation which would offer a national, uniform solution to curb the practice of tampering with or altering of odometers.

On April 29, Senator Magnuson and again, you, Senator Hart, offered an amendment to S. 976 which, we believe, would go far toward achieving this objective. The key provisions of this proposal would:

1. Prohibit the sale or use of any device which changes the mileage actually registered on the odometer, except for purposes of legitimate repair;
2. Make it unlawful to disconnect, reset, or alter the odometer or to operate a vehicle with a disconnected odometer with intent to defraud;
3. Permit legitimate service, repair, or replacement of an odometer as long as the recorded mileage remains the same or, where this cannot be done, posting written notice in the vehicle that the odometer has been reset at zero, the date of the repair, and the mileage indicated at the time of repair; and

4. Provide a method of certifying actual mileage on the vehicle upon its transfer.

The amendment would be self-enforcing by providing recovery of \$1,500 or three times the actual damages sustained, whichever is the greater. Court costs and attorneys' fees for successful plaintiffs would also be awarded.

The amendment would not infringe on State odometer laws except to the extent that the State laws were inconsistent with provisions of the proposed amendment. Criminal penalties provided under State laws would continue in force.

Senator Magnuson noted in his remarks when offering the amendment that consumers rely heavily on the odometer reading to determine a vehicle's fair value as well as to evaluate its safety characteristics based upon apparent use.

The adoption of this amendment would give a purchaser greater assurance that the mileage indicated on the odometer is an accurate representation of the actual mileage a vehicle has traveled.

Seventeen States presently have odometer laws, thus resulting in a patchwork pattern of State legislation. Furthermore, each State law has its own unique characteristics and penalties resulting in a lack of uniformity among the laws of these States. Given the mobility of motor vehicles and their interstate use, it is essential that some degree of equality and uniformity of treatment on a national scale be provided.

A Federal law would provide uniformity in the provisions, application, and enforcement of the law. As members of the retail automobile industry, our dealers have already experienced the undesirable effects which arise when one State has an odometer law and an adjoining State does not.

Similar problems develop when adjoining States have odometer laws with different basic provisions. The problem is simply this: A flow of vehicles develops into or out of a particular State either in order to avoid the application of that State's law, or to take advantage of the provisions of a different law.

Purchasers, including dealers, in States with odometer laws suffer when vehicles with altered odometers are brought into their States. They may pay inflated prices based on an inaccurate odometer reading. The irony is that the citizens in States with odometer laws are victimized by the failure of other States without such laws to curb this practice.

A Federal law which applies evenly to all will, we believe, benefit both customers and dealers alike. While the amendment may not solve all problems, it is an excellent start toward providing an equitable solution in an area which is presently a source of considerable frustration and unfairness. For this reason, NADA fully endorses the proposed amendment.

On the matter of property loss reduction standards, NADA supports the concept of reducing motor vehicle property losses as well as measures which will result in the increased safety and repairability of motor vehicles. However, we are concerned that the Secretary may not be able to develop and prescribe a meaningful system of tests and testing procedures designed to allow a determination and comparison

of the susceptibility to damage of passenger motor vehicles by July 1, 1972, the date which has been proposed.

We are also concerned that a hurried implementation of this legislative mandate may result in an increase in the cost of the motor vehicle to the consumer.

We fully agree with the bill's requirement that property loss reduction standards should be compatible with safety standards. Moreover, we contend that conflicts which may arise between the property loss reduction and safety standards should probably be resolved in favor of the safety standards.

NADA believes that the National Highway Traffic Safety Administration is the proper governmental unit to promulgate technical safety or property loss reduction standards and to evaluate the cost factor to the ultimate consumer. We recommend that Federal standards should preempt any conflicting State law or regulation.

Through its rulemaking procedures, the National Highway Traffic Safety Administration provides an appropriate forum for the evaluation of highly technical information which can be submitted by any party interested in a proposed regulation.

We believe that the Administration is in the best position to objectively consider and analyze the arguments concerning safety, property loss reduction, environmental, cost/benefit, and the numerous other factors which must be evaluated and coordinated in established individual safety and property loss reduction standards.

On the matter of motor vehicle bumper standards, NADA supports the concept of more effective bumpers for automobiles. We believe that economic benefits may accrue to the consumer by the development of more effective bumpers.

While NADA does not have the expertise to comment on the technical requirements of the energy absorption bumper standard proposed in S. 976, we believe that there should be national uniformity in all safety or property loss reduction standards, including those for bumpers.

We believe that a multiplicity of standards with respect to any component of equipment or area of design of a motor vehicle promulgated by more than one governmental authority could result in defeating the objectives for which such standards were developed. Specifically, NADA is aware of the Federal Motor Vehicle Safety Standard issued April 14 of this year, applicable to passenger car bumpers, as well as bumper legislation recently enacted in Florida and Maryland, and pending in many other States.

The bumper standard in S. 976 has been proposed to help reduce or eliminate costs to automobile owners resulting from minor collisions. NADA's concern is simply that the design and production costs generated at the manufacturing level as a result of the obligation of the manufacturer to meet several different standards may result in a net increase in the cost of the automobile to the consumer. We do not wish to see cost decreases offset by cost increases.

Again, NADA respectfully submits that the National Highway Traffic Safety Administration is the appropriate governmental unit for the promulgation of all technical standards applicable to the manufacturing of passenger automobiles and to evaluate the cost benefit factors to the consumer.

In the area of public information of test results, one proposed change in the National Traffic and Motor Vehicle Safety Act of 1966 requires that the Secretary compile and furnish to the public data submitted to him by the manufacturers to determine a vehicle's susceptibility to damage.

NADA considers it extremely important that any tests or testing programs to determine a vehicle's susceptibility to damage be developed and administered fairly. All pertinent factors should be analyzed in such testing programs and the results made public. This is absolutely necessary in order to insure fairness to the manufacturers and dealers who market these vehicles to the public.

NADA opposes the proposed provision which would require the manufacturers of motor vehicles to furnish prospective purchasers the results of testing prior to sale. We believe that such information should be made available through a third party such as the Department of Transportation.

Regarding the manufacturer's testimony yesterday about the problems that could occur in the testing of production models. I would like to point out that it would certainly be a major problem to the dealer as well, because of the time element involved in the testing.

So we support their request that pilot models might be considered for such testing if these requirements have to be met.

Periodic motor vehicle inspection. NADA supports periodic motor vehicle inspection because we are convinced that it leads to increased safety on the highway. Thirty-one States presently have periodic inspection programs. Eight other States have a random or spot inspection system.

We strongly support the provision in this legislation which would require inspection of motor vehicles whenever title is transferred for purposes other than resale and whenever the vehicle sustains damage to any safety-related equipment.

Many automobile dealers are presently equipped and staffed to perform inspection of vehicles and to operate sophisticated diagnostic equipment as contemplated under this proposal. In fact, automobile dealers, as well as other service repair facilities, are licensed to perform, and do perform, motor vehicle inspections under a number of the State systems which are presently in effect.

It would appear absolutely necessary to include automobile dealers in any plan to implement a nationwide periodic motor vehicle inspection system, if this system is to be fully functional and effective at the earliest possible date.

NADA opposes that provision of this bill which would prohibit any motor vehicle inspector from receiving any benefit in or from a business or enterprise engaged in the sale of motor vehicles, automotive repair parts, or accessories. Each State should have the option to develop a periodic motor vehicle inspection system which suits the particular needs of that State. States should not be precluded from licensing automobile dealers as vehicle inspection stations.

NADA supports the proposal which would provide assistance to States in establishing or improving programs of periodic motor vehicle inspection and motor vehicle registration.

In the area of insurance cost data to prospective purchasers, NADA recognizes the merit in providing customers with insurance cost infor-

mation. However, the insurance cost data with respect to a vehicle's susceptibility to damage is only one of many factors in determining the total insurance premium. Other factors which in our opinion are of even greater significance include the age, driving record, marital and family status, purpose for which the vehicle is being used, number of drivers, and the location where the car will be operated.

For the Government to require a dealer to furnish a prospective customer with only one of a number of variables involved in the total cost of insurance is to mislead the public.

Uniform title law requirements. NADA supports the proposal contained in this legislation for a State motor vehicle registration and uniform certificate of title program similar to the registration and title program contemplated by the Uniform Motor Vehicle Code and Model Traffic Ordinance. We believe the establishment of title laws on a national basis will effectively act as a deterrent to auto theft.

Furthermore, NADA urges that such a uniform title law include the requirement that all liens against a motor vehicle be recorded on the face of the certificate of title in order to facilitate the transfer of title between vehicle owners and vehicle purchasers.

We thank you for the opportunity to present our views before this committee.

Senator HART (presiding). Thank you very much, Mr. McEleney. I am delighted that you are stating so strongly support for the odometer aspect of the pending legislation. You make a point that sometimes is lost in the shuffle I think, that even a State which has attempted to protect dealer and consumer by enacting the odometer bill is trapped and punished if a neighbor has open season and the car is driven across the line; you are hurt as a dealer in the first State, you are taken as a dealer in the second, and the consumer in the first State who is thought to have been protected is done a disservice, and the consumer on the other side of the line is stuck, too.

So the thing has a nice symmetrical balance to it. It makes sense from every point of view I think.

Mr. McELENNEY. We certainly think so, Senator, and that is why we are so actively supporting this legislation. We think it will clean up an area that needs a lot of cleaning up, Senator.

Senator HART. I hope at least this much, we can get promptly on to the law, because a lot of the problems that confront us admittedly are different in solution, but it seems to me that this is a manageable problem.

Ideally, when we drew this bill with respect to inspection stations, again the symmetry is great, let's have an inspection testing service that is unrelated to any merchandising or repairing place. Let it be unconnected to anything like that, and as I would anticipate you say no to that, you feel in order to put an inspection program on the road at the earliest possible date we would have to include in the inspection system dealers and other places that are now engaged in repair work and sale of replacement parts.

Can you suggest any requirements or limitations that would eliminate the abuses that obviously could be there? Is there any way to reduce the temptation without ruling out of bounds the repair shop or the dealer or the garage?

Mr. McEENEY. At first thought, Senator, I imagine the strongest way to obtain compliance by everyone would be to put some form of penalty on any abuse of the program by the licensed station. I might add that many dealers today have heavy investments in diagnostic equipment. I recognize the fact that much of it might have to be tailored to comply with the program which might be established on a nationwide basis. But nevertheless the fact remains many dealers already have this equipment in their operations and are staffed and in a position to proceed.

I am thinking primarily of States where there are no periodic motor vehicle inspection laws today. I realize the States that have them have automobile dealers and other repair stations licensed to perform these inspections.

I know I am deviating a little bit from your question, Senator, but I have to say this, there must be a pretty strict policing of this in the States where they have periodic motor vehicle inspection, borders the State of Illinois, where they do have mandatory inspection of trucks—not passenger cars. It is a very strict law and it is adhered to very closely not only by residents of Illinois but by those of us who operate vehicles in the State of Illinois, such as my service trucks and so on. It is very strict, and these include repair stations operated by dealers.

Mr. McCARTHY. I might add one thought, Senator, and that is in the inspection performed by any repair facility I certainly think the person having his automobile inspected should be free to have repair done any place. I recognize this will not in itself cure the abuses that you and we are concerned with, but it does provide some protection to the automobile owner that if he feels that the inspection report or the person performing it is not really up to par, then he would be free to take it to another repair facility.

Senator HART. We would not be able to make a trade here, that you permit a dealer to inspect but have the law prohibit his doing repairing?

Mr. McCARTHY. We have actually thought about that, but we did not believe that would lead to curing the problem.

Mr. McEENEY. Yes, that was under discussion.

Senator HART. It is to your credit that you even thought about it.

You say on the business of giving the customer insurance cost information for the Government to require a dealer to furnish a prospective customer with only one of the number of variables involved in his total insurance cost is to mislead. I would suggest really the only variable to the customer is the item of the vehicle's susceptibility to damage and its relationship to insurance, because he is always the same age, he is always the same father or father of the irresponsible 22-year-old or whatever you want to call him.

Mr. McCARTHY. Maybe a better way to put that Senator—I recognize your point, but in arriving at the cost of the insurance premium, it is our feeling that the insurance cost data with regard to the vehicle would be rather insignificant in comparison with the elements that these other factors we mentioned would contribute to an insurance premium.

Senator HART. To the extent that we can provide him with information that is understandable and relevant we should try.

Mr. McEENEY. There are some variables too, Senator. For instance, the age does become a factor when they go into a different age bracket

as far as the insurance companies are concerned. I think the fact that a man that is picked up while intoxicated, say yesterday, certainly alters the likelihood of his obtaining his insurance the next year at the same rate. I think there are some variables that enter into this picture besides the susceptibility to damage that would affect insurance cost information.

Mr. McCARTHY. On this question I would like to raise a few questions which I hope will be helpful. In the bill itself, it is not clear as to what exactly is meant by insurance cost data, as to whether this means an element of premium or some other type of rating system. That is not particularly clear. We also are not sure whether this will be limited to new cars only or whether it may be extended to any car sold by a dealer. And if such information were required, being consistent with our earlier statement, we would prefer that the Department of Transportation make this information available to the prospective purchasers as they are attempting to do in their other areas of automobile information disclosure.

Senator HART. I guess the next to the last point I would raise with you involves the section for the providing of test result information. You say that we should not require the manufacturer to give to you and you to provide the prospective buyer the results of testing, and you suggest that a third party such as the Department of Transportation do it. Our problem is we have already attempted to make available to the buying public information from the Department now. You know, it is in that book that occupies space in every showroom, I am sure, but does not get much use, and you can explain that in a variety of ways.

But if, and I understand you recommend against this, but if in the distribution of automobiles the test information was required to be given by you to a prospective buyer, you have Olds, Cadillacs, and Chevrolets, if several models of Chevrolet in a model year were way down the list of desirables under this test, wouldn't you put the heat on Detroit to improve the performance under tests of that model? Isn't there at least some encouragement to upgrade performance standards if we do this? I understand you do not want us to.

Mr. McEENEY. I understand that, Senator. Let me answer it in this light. I realize the competitive situations that could be a result of this procedure, and I recognize that; however, I think that there are many ways in which the public—and I cannot give you ways off the top of my head right now—but I would think someone would find ways to circumvent this program somehow at the retail level, Senator. That is just a conviction I have on it.

For instance, let me give you some personal experience, and again you have touched it. But let's take the booklets that are provided to the customers today in the glove compartment of the car, and I am talking here about the stopping distance, the load factor as far as tires are concerned and so on. I can give you this from a firsthand experience, and we are a fairly large dealership—we sell approximately 1,100 new cars a year. I have yet to find a customer to request this information.

We have provided it voluntarily, and seeing the lack of customer interest or consumer interest, I do not know, but I would almost be inclined to say that I think you might even have the same situation with this test result information on the part of the consumer.

I guess that is just what I am relating it to from our past experience in the other area. It is a difficult one. Naturally I am biased. I have to

say that in all candor with you. While it could be a detriment to us in a certain year, it could be an asset in another year, I recognize that, and it does provide again the competitive situation that I guess we would all like to see develop. Hopefully the manufacturers will take on this challenge voluntarily, Senator, but that is the only thought I can express at this time.

Mr. McCARTHY. On this topic I would like to note an earlier point, and that is before such test data is made available to the public, we would hope it is representative data, that you just not pick one item which a certain series of cars would fail badly, while other cars would score well. We would hope it would be representative of the vehicle so it would be a fair comparison.

Senator HART. We would want it to be.

Mr. McELENENY. I guess you can relate to that the performance cars. There are a number of tests evaluated on automobiles in January every year in the Florida races. Some cars may have a certain weakness in some areas as to performance while they stand out in others, which gives you a rounded out picture.

Senator HART. Well, certainly not just out of curiosity, but to get a dealer's point of view, do you think you would be able to sell more cars in the next 30 days if you had them equipped with bumpers such as we saw this morning than you would without them? Do you think it would make any difference? Did you see those?

Mr. McELENENY. Yes, I did this morning, and quite interesting I must say. Senator, I am going to draw on my experience in the past and the apathy on the part of the consumer when it comes to a lot of this material on automobiles. As an example, I can refer to shoulder belts. A very, very small percentage of people buying new cars today will ever take that shoulder belt off the receptacle that it is in when they get the car. It is usually only when they trade it off. I think a similar experience might prevail here. That is a hard one to answer. I think what you are doing is assuming the cost information that was given to us this morning, but even with say a \$40 or \$50 add-on, I question the customer's interest in purchasing this for his automobile.

His attitude I think in a lot of cases would be, "this won't happen to me," and that is the apathy that I speak about.

I might even go back into the air emissions system on automobiles today. Frankly there is very little customer interest in maintaining your air emission systems on automobiles today. That bothers me a great deal. We can put all this equipment on automobiles like the bumper and the passive restraints and so on that are looked for in the years ahead here and the air emission controls, which are fine, and I know they are needed, but we must somehow either educate the public or train the public or convince them that the servicing of these units where there is servicing required has to be done or should be done. But there is a complete lack of interest.

I know of one program, for instance, and I am sure you are probably aware of it, General Motors' test out in Phoenix last year where for a limited period of time, at least long enough to see if it would be picked up by the public, where the air emission controls were available for older model automobiles at a very reduced price, and the result was a very decided lack of interest on the part of the public. I think this is what happens in all of these areas frankly.

Senator HART. At this late hour in the afternoon I won't ask you your opinion as to what does persuade us—I am a consumer—to make our shopping decision on cars. Apparently you are suggesting our sights are not as high or our understanding as broad as it should be.

Mr. McELENEX. No, Senator, I think it is broad. I am not trying to say that at all; I am concerned, and I guess we can all express opinions and yet at today's writing I do not think any of us can really support anything with enough factual information. But I am concerned about the retail price of automobiles in the next 3 to 4 years as a result of all the regulations and legislation coming forward. I really am, not only as a retail automobile dealer, but I am concerned for our whole industry, because I think it could have a very detrimental effect, and yet I recognize the need for some of the things that are regulated and also legislated. But there has to be a balance somewhere. Where that balance is I do not know.

You asked a question a moment ago, and I do want to offer this thought. I think styling or change, Senator, is still a big factor in persuading people to change or buy automobiles. I think, too, that recognition ought to be given to the attempts of the manufacturers on a voluntary basis to provide added safety equipment and innovations in the way of safety over the past 4 or 5 years.

I recognize, too, that legislation and regulation has probably prompted some of this. This is an area of concern to me as a retail automobile dealer. Are we taking away the ingenuity and probably the voluntary action on the part of the manufacturers to come up with new ideas in the area of safety equipment by the regulation and the legislation that is being forced upon this industry? I am concerned about it very much.

Not to inject personalities, but my whole background is automobiles. I am a second-generation automobile dealer. We have a large investment in my area, in a retail automobile facility. I have sons coming into the business. So I am very concerned about what happens here, what happens over at DOT, what has happened at the manufacturing level, and that is why I have a deep interest in our association, because of the future in the business.

Senator HART. All of which is understandable.

Mr. Sutcliffe.

Mr. SUTCLIFFE. I have no questions.

Senator HART. Did Mr. McCarthy have anything he would like to add to that?

Mr. MCCARTHY. No, sir, Senator.

Senator HART. He has followed this legislation very attentively.

Mr. MCCARTHY. Thank you very much.

Senator HART. Gentlemen, thank you very much.

Mr. McELENEX. We want to thank you, Senator and Mr. Sutcliffe, for having us.

Senator HART. We adjourn to resume at 10 o'clock tomorrow morning in this room.

We would anticipate first hearing Congressman Eckhardt, Dr. Haddon second, and we will move Mr. Kemper up because I understand he has some late afternoon schedule problem. Mr. Pradko and his associates, Mr. Noettl, and then the delegation from Maryland led by Mr. Johnson.

(Whereupon, at 3:30 p.m., the hearing was adjourned, to reconvene at 10 a.m., Wednesday, May 12, 1971.)









5 5220 B.1









U. C. BERKELEY LIBRARIES



C061048144



